



**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: Carmel Toussaint**

Heard: September 15, 2011 in Toronto, Ontario  
Reasons for Decision: September 26, 2011

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick H. Webber  
Brigitte Geisler  
Robert C. White

Chair  
Industry Representative  
Industry Representative

Appearances:

Clement Wait	)	For the Mutual Fund Dealers Association of
	)	Canada
Carmel Toussaint	)	In Person
	)	

1. By Notice of Hearing dated December 22, 2010, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened on September 15<sup>th</sup>, 2011 in Toronto, Ontario, to consider allegations against Carmel Toussaint (the “Respondent”) as follows:

2. Between January 2008 and January 2010, the Respondent borrowed a total of \$20,000 from clients LM and LJ, which he failed to repay in full, thereby:

- (a) placing his personal interests above those of his clients and giving rise to a conflict of interest contrary to MFDA Rule 2.1.4;
- (b) failing to deal fairly, honestly and in good faith with clients and engaging in business conduct that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1; and
- (c) failing to comply with policies and procedures of the MFDA Member, PFSL by failing to disclose to PFSL his personal financial dealings with the clients, thereby interfering with ability of PFSL to supervise his activities, contrary to MFDA Rules 1.1.2 and 2.5.1.

3. The MFDA and the Respondent had entered into an agreed Statement of Facts, signed by the MFDA and the Respondent on August 24, 2011. The Panel also heard oral submissions from MFDA Counsel and from the Respondent.

### **Facts**

4. Statement of Facts: In January 2008, the Respondent borrowed \$15,000 from client LM (the First Loan) but did not disclose the loan to his employer, PFSL Investments Canada Ltd (PFSL). The agreed interest was paid, but in April 2008 the cheque to repay the principal of the loan did not clear the Respondent’s bank account due to insufficient funds. In May 2008 PFSL received a complaint regarding the unrepaid First Loan and on May 14, 2008, the Respondent confirmed in writing to PFSL that he had borrowed \$15,000 from LM and had failed to repay the principal.

5. In June 2008, the Respondent repaid \$11,100 on account of the First Loan and provided PFSL with a signed statement in which he promised not to borrow from clients again. On July 28, 2008 PFSL placed the Respondent on probationary status with close supervision for one year. PFSL repaid LM the sum of \$4152 which it subsequently recovered from the Respondent from commissions owing to him.

6. On November 19, 2009, the Respondent was interviewed by the MFDA and admitted borrowing the monies from LM and acknowledged that he understood it was contrary to PFSL's Policies and Procedures.

7. In January 2010, the Respondent borrowed \$5,000 from client LJ (the Second Loan), but did not disclose the Second Loan to PFSL. On May 3, 2010, the Respondent resigned from PFSL and on May 10, 2010 the MFDA received a complaint from LJ alleging that the Respondent had borrowed money from LJ and was unable to repay the loan. On June 2, 2010, PFSL was told by LJ that the Respondent had borrowed \$5,000 from LJ and had repaid only \$1200.

8. On June 27, 2010 the Respondent borrowed \$1000 from client JA (the Third Loan) and on August 12, 2010 JA advised PFSL that this loan had not been repaid. This loan is not included in the allegations against the Respondent because it occurred after he resigned from PFSL when he was no longer subject to the jurisdiction of the MFDA.

9. In summary, between January 2008 and January 2010, the Respondent borrowed a total of \$20,000 from clients LM and LJ, of which he failed to repay \$5,300 in principal and interest to LJ.

### **Misconduct and admissions**

10. In the agreed Statement of Facts the Respondent admitted that the borrowing and failure to repay as outlined above constituted misconduct as set out above.

11. Counsel for the MFDA reviewed with the Panel the relevant MFDA Rules, the MFDA Member Regulation Notice MR-0047 regarding borrowing from clients and a number of cases on point. It is the Panel's conclusion that, based on the foregoing and the agreed facts, and

independent of the Respondent's admissions above, the conduct of the Respondent constitutes the misconduct alleged by the MFDA.

## **Penalties**

### I. Permanent Prohibition

12. The MFDA submitted, and the Respondent did not contest (either in the agreed Statement of Facts or at the hearing) that, at a minimum, the appropriate penalty to impose on the Respondent is a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1. The Panel agrees that a permanent prohibition as submitted by the MFDA is appropriate in this case and is supported by the cases reviewed with the Panel by MFDA Counsel. The Respondent continued to borrow money from clients even after acknowledging that it was wrong and promising not to do so. The Panel agrees with the submission of the MFDA that the continual breach of the MFDA Rules and PFSL's policies and procedures suggest that the Respondent is not governable and as such is not fit to remain in the industry.

### II. Fine and Costs

13. The MFDA and the Respondent jointly requested that the Panel determine, based on the agreed Statement of Facts, the amount of the appropriate fine (if any) to impose on the Respondent, pursuant to s.24.1.1(b) of MFDA By-law No. 1 and the appropriate amount of costs (if any) of the investigation and hearing to be awarded against the Respondent, pursuant to s.24.2 of MFDA By-law No. 1. The MFDA sought a fine in the range of \$5,000 to \$10,000 and costs in the range of \$2,500 to \$5,000.

14. The MFDA Counsel cited a number of cases in support of the principle that fines in cases such as this should be, at a minimum, approximately equal to the amount that remains unpaid by the Approved Person, and that fines in such amounts reflect the seriousness of the misconduct and prevent the Respondent from profiting from his misconduct. These cases were provided to the Panel in the MFDA Book of Authorities and have been reviewed by the Panel. They are:

In the Matter of Arnold Tonnies, [2005], MFDA File No. 200503  
In the Matter of Raymond Brown-John, [2005], MFDA File No. 200502  
In the Matter of Glenn Murray Greyeyes, [2006], MFDA File No. 200510  
In the Matter of Earl Crackower, [2005], MFDA File No. 200506  
In the Matter of Stephan Headley, [2006], MFDA File No. 200509

15. The submissions of the MFDA and the cases cited above also referred to other principles which should guide hearing panels in determining appropriate penalties:

- (a) The primary goal of securities regulation is protection of the investor and capital markets;
- (b) Sanctions are intended to be preventative, protective and prospective in nature in order to remove from the capital markets...those whose past conduct...indicates that their future conduct may be detrimental to the capital markets;
- (c) The panel should consider (a) protection of the investing public, (b) integrity of the securities markets, (c), specific and general deterrence, (d), protection of the MFDA's membership, and (e), protection of the integrity of the MFDA's enforcement process;
- (d) General deterrence is designed to keep an occurrence from happening; it discourages similar wrongdoing in others so as to re-affirm public confidence in the regulatory system.

16. This Panel agrees with these principles. Since this Panel has already determined that the Respondent should be permanently prohibited from future participation in the industry, the principle of general deterrence is of particular importance in determining the appropriate fine. While the amount involved in this case was relatively small compared to the other cases cited and while "borrowing" might be considered less serious than "misappropriating", this panel feels that the fine should reflect the serious nature of the Respondent's misconduct. The borrowing was not a single event but was repeated. The Respondent knew it was wrong to borrow from clients. The Respondent repeated his misconduct even after he promised his employer he would not do so again. The amounts repaid on the loans occurred only after the Respondent was confronted with his misconduct. The Panel also notes that the essence of the misconduct is the act of borrowing money from the client and not the amount which remains outstanding at the time of the hearing. Furthermore, regarding repayments, the reasoning in the Headley case is apt in this matter. At p.27 the panel stated, "...restitution is a significant factor [in determining penalty]...but the timing of the restitution somewhat lessens its impact."

17. The MFDA suggested a fine in the range of \$5,000 to \$10,000. The MFDA penalty guidelines suggest a minimum fine of \$10,000. MFDA Counsel characterized a fine in the amount of the unpaid loans as a minimum. Certain mitigating factors also must be taken into account: the Respondent has no prior disciplinary history with the MFDA, has cooperated in the process, and admitted his misconduct at the hearing. The Panel also has taken into account the Respondent's apparent remorse for his misconduct and his personal situation at the time of the misconduct, which continue to the present i.e. the serious health and financial problems suffered by both he and his wife. Were it not for the mitigating factors, the Respondent's personal situation and the fact that the MFDA suggested a fine of \$5,000 to \$10,000, this panel would have imposed a larger fine in this case, largely based on the aggravating factors noted above and the principle of deterrence to others regarding this type of misconduct. However, given all the circumstances, this panel orders a fine in the amount of \$10,000.

18. Regarding costs, taking into account the Respondent's cooperation which served to shorten the process and consistent with the amount the MFDA stated it would be seeking in the Agreed Statement of Facts, the Panel orders costs in the amount of \$2500.

### **Order**

19. It is hereby ordered that the following penalties are imposed on the Respondent:

- (a) A permanent prohibition from conducting any securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to s.24.1.1(e) of MFDA By-law No. 1;
- (b) A fine in the amount of \$10,000 pursuant to s.24.1.1(b) of MFDA By-law No. 1; and
- (c) Costs in the amount of \$2500 pursuant to s.24.2 of MFDA By-law No. 1.

**DATED** this 26<sup>th</sup> day of September, 2011.

“Frederick Webber”  
Frederick H. Webber,  
Chair

“Brigitte Geisler”

Brigitte Geisler,  
Industry Representative

“Robert White”

Robert C. White,  
Industry Representative

Doc 269129