



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: James Vilfort

Heard: December 3, 2010 in Toronto, Ontario
Reasons for Decision: December 15, 2010

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Fred Kaufman, C.M., Q.C.
T. Hugh McNabney
Selwyn Kossuth

Chair
Industry Representative
Industry Representative

Appearances:

Francis Roy)	For the Mutual Fund Dealers Association of
)	Canada
James Vilfort)	Did Not Appear
)	

Background

1. By Notice of Hearing dated September 10, 2010, the Respondent, James Vilfort, was notified that a disciplinary proceeding had been commenced against him and that the first appearance would take place by telephone conference before a hearing panel (the “hearing panel” or the “panel”) of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA” or the “Association”) at 10:00 a.m. (Eastern) on October 27, 2010. Attempts were made by the Association to serve this notice on the Respondent at his last known address as noted in the National Registration Database, 1405 Maxime Street in Ottawa, Ontario, but the process server was informed by the person responding “that Mr. Vilfort had not lived at that address for approximately four or five years.”

2. On September 21, 2010, an administrative assistant in the enforcement department of the MFDA sent a copy of the Notice of Hearing, with a covering letter and copies of the MFDA’s Rules of Procedure and Guide to the Disciplinary Process, to the Respondent at his last known address. Delivery was confirmed by Canada Post and a receipt was signed by someone other than the Respondent. Further inquiries proved fruitless, and Mr. Vilfort did not appear, either personally or by counsel, at the first appearance or at the hearing itself. Nor did he file a Reply as required by Rule 8.1 of the Rules of Procedure.

3. The panel, after appropriate inquiries from staff, declared itself satisfied that all reasonable attempts had been made to locate the Respondent, but to no avail, and the hearing therefore proceeded in the Respondent’s absence, as authorized by Rule 8.4(1)(a).

4. Although Rule 8.4(1)(b) provides that a hearing panel may “accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-law No. 1,” the panel considered the evidence contained in Stephen Glanville’s detailed affidavit (filed as Exhibit 4), which traced the Respondent’s conduct relevant to the two allegations brought against him.

5. Since some of the facts contained in the evidence disclosed “intimate financial or personal matters” of the Respondent’s clients, the panel ordered, as permitted by Rule 1.8(2), that that part of the evidence shall not be disclosed to the public.

Allegations

6. **Allegation #1:** Between January and July 2008, the Respondent misappropriated a total of \$11,719.37 from three clients, thereby failing to deal fairly, honestly and in good faith with the clients, contrary to MFDA Rule 2.1.1.

7. **Allegation #2:** After resigning from the Member on July 14, 2008, the Respondent failed to remit, return and deliver to the Member client information and files in his possession, including supervisory records, contrary to the terms of an agreement with the Member, thereby:

- (a) failing to comply with MFDA Rules 1.1.2 and 1.1.5(f), and MFDA Rule 2.1.1;
- (b) failing to comply with the Member’s policies and procedures, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1; and
- (c) interfering with the Member’s ability to comply with the requirements of MFDA Rule 5.1 to keep such books, records and other documents as are necessary for the proper recording of its business transactions, financial affairs and the transactions its executes on behalf of others, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

The Facts

8. The facts, as set out in the Notice of Hearing, are as follows:

Registration History

9. From September 18, 2007 to July 14, 2008, the Respondent was registered in Ontario as a mutual fund salesperson with Investors Group Financial Services Inc. (“Investors Group” or the “Member”).

10. Investors Group became a Member of the MFDA on February 8, 2002.

11. On July 14, 2008, the Respondent resigned from the Member. Thereafter, as a result of the events described herein, Investors Group later deemed the Respondent as having been terminated. The Respondent is not currently registered in the securities industry in any capacity.

Allegation #1 - Vilfort Misappropriated Funds Totaling \$11,719.37 from Clients

12. Between January and July 2008, the Respondent misappropriated a total of \$11,719.37 from three clients. The clients had provided the monies to the Respondent so that he could purchase investments for their accounts. The Respondent fraudulently deposited these funds in a bank account under his control and for his benefit, as described in greater detail below. The Respondent was not authorized or directed by the clients to deposit the monies in his bank account. Details of the amounts misappropriated by the Respondent are provided in the chart below:

Date	Client Name	Amount Misappropriated by the Respondent
January 30, 2008	AJ	\$4,092.78
May 30, 2008	RAK	\$2,250.64
May 30, 2008	RAK	\$3,375.95
June 25, 2008	LL	\$2,000.00
	Total	\$11,719.37

13. With respect to clients AJ and RAK, the Respondent misappropriated their monies by taking the following steps:

- (a) The Respondent accepted cheques or bank drafts made out to Investors Group, endorsed them to himself by forging the clients' signatures and deposited them in his personal bank account, thereby misappropriating the monies;
- (b) The Respondent did not submit the client cheques or bank drafts to Investors Group to be deposited in the clients' accounts, contrary to written instructions from the clients to do so; and

(c) In response to communications received from the clients, the Respondent provided false confirmations that their monies had been invested or were about to be invested.

14. With respect to LL, the Respondent misappropriated his monies by taking the following steps:

(a) When LL approached the Respondent in June 2008 to open a new account at Investors Group, the Respondent advised LL to complete an Investors Group new account application form;

(b) The Respondent did not submit LL's new account application form to Investors Group for processing. As a result, no account was set-up for LL;

(c) When LL inquired about making investments, the Respondent requested that LL send him a cheque payable to him rather than to Investors Group; and

(d) On the Respondent's advice, LL sent him a cheque in the amount of \$2,000, which the Respondent deposited in his bank account, thereby misappropriating the monies.

15. None of the clients authorized the Respondent to deposit their monies in his bank account.

16. By misappropriating the clients' monies, the Respondent failed to deal fairly, honestly and in good faith with the clients, contrary to MFDA Rule 2.1.1.

Allegation #2: Failure to Comply With the Member's Policies and Procedures

17. When the Respondent became registered with Investors Group, he signed an Investors Group's Consultant Agreement pursuant to which he agreed to comply with the following requirements, among others:

2. [Approved Person's] Responsibilities

- (i) The [Approved Person] agrees to ... comply with all rules, regulations and policies that [Investors Group] may prescribe from time to time regarding the conduct of the [Approved Person]...

...

7. Confidential Information

The [Approved Person] acknowledges that during the term of this Agreement, the [Approved Person] will have access to certain confidential information relating to the business of [Investors Group] and the business of [Investors Group's] clients. The [Approved Person] further acknowledges that such information is proprietary to and a trade secret of [Investors Group] and its clients. [...]

“Confidential Information” is information disclosed to or acquired by the [Approved Person] relating to the business of [Investors Group] or its clients as a consequence of the [Approved Person] performing his/her obligations under this Agreement, including information developed or gathered by the [Approved Person]. Such confidential information includes, but is not limited to, information regarding investments, client lists, personal financial reviews, portfolios, receipts, data files, financial information and summaries of client transactions...

8. Return of [Investors Group's] Property and Confidential Data

Upon termination of this Agreement, the [Approved Person] shall return to [Investors Group] all confidential information ... and shall erase all excerpts from and copies of confidential information stored in electronic or machine readable format on the [Approved Person's] personal computer system. The [Approved Person] shall provide [Investors Group] with a certificate that he/she has complied with this provision within three (3) days following the termination of this Agreement.

18. The Investors Group Consultant's Agreement is designed and intended to, in part, permit Investors Group to comply with its regulatory obligations, including its obligations under MFDA Rules 1.1.5(f) and 5.1 to ensure that it keeps such books, records and other documents as are necessary for the proper recording of its business transactions, financial affairs and the transactions it executes on behalf of others.

19. When the Respondent resigned from Investors Group on July 14, 2008, he failed to remit, return and deliver to Investors Group client files and client information in his possession, including records relevant to the supervision of the Respondent, contrary to the terms of the Consultant Agreement. He further failed to provide Investors Group with a certificate that he had complied with the terms set out in section 8 of the Investors Group's Consultant Agreement.

20. On July 23, 2008 and September 5, 2008, Investors Group sent letters to the Respondent requesting, among other things, that he return to it all client information and files in his

possession. Investors Group's request was reiterated on September 16, 2008 in a letter sent to the Respondent by its solicitors.

21. To date, Investors Group has not received a response to any of the letters sent to the Respondent. The Respondent has also not returned the client files and information in his possession, nor has he provided Investors Group with a certificate in accordance with section 8 of the Investors Group's Consultant Agreement.

22. By failing to remit, return and deliver the client files and information in his possession, the Respondent has failed to comply with MFDA Rules 1.1.2 and 1.1.5(a). In addition, he has failed to comply with Investors Group's policies and procedures and thus interfered with Investors Group's ability to comply with the requirements of MFDA Rule 5.1, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

Discussion

23. As enforcement counsel rightly pointed out, the overwhelming and uncontradicted evidence established that, over a six month period between January 2008 and June 2008, the Respondent obtained monies from his clients which they thought were going to be invested in legitimate investment products, when in fact he used those funds for his own benefit. Furthermore, when clients made inquiries about their purported investments, the Respondent provided false confirmations. We have no doubt that, by this conduct, he failed to "deal fairly, honestly and in good faith with his clients," contrary to MFDA Rule 2.1.1.(a). Allegation # 1 has therefore been proven.

24. As stated above, when the Respondent became registered with Investors Group, he signed a Consultant Agreement which, *inter alia*, required him to "comply with all rules, regulations and policies that [Investors Group] may prescribe from time to time ..." He also agreed that, upon termination of the agreement, he "shall return to [Investors Group] all confidential information ... [and] ... shall provide [Investors Group] with a certificate that he/she has complied with this provision within three (3) days following the termination of this Agreement."

25. When the Respondent resigned from Investors Group on July 14, 2008, he failed to return client files and client information in his possession. On July 23, 2008, Investors Group wrote to the Respondent requesting the return of this information. When he failed to do so, Investors Group wrote to him again, first on September 5, 2008, and later, on September 16, 2008, but there was no reply. Indeed, these files have never been recovered.

26. These requirements contained in the Agreement are consistent with MFDA Rule 1.1.5(f), which requires Approved Persons to prepare and maintain books, records and other documents that are necessary for the proper recording of a Member's business transactions and financial affairs. The Rule also provides that these records are not the property of the Approved Person, but of the Member, and must be made available when required.

27. It is easy to see why this Rule exists, for without the proper books, records and other documents the Member is in a difficult position to deal with the Approved Person's clients where, as in this case, there are claims and the Member does not possess sufficient information to evaluate the situation.

28. By failing to remit, return and deliver to the Member the required information, the Respondent has violated not only his Agreement with the Member, but also the relevant Rules of the Association. Allegation # 2 has therefore been proven.

The Penalties

29. In considering the appropriate penalties, hearing panels look at a number of factors: the gravity of the offence, the respondent's past conduct, his or her experience and level of activity in the capital markets, the harm suffered by investors, the benefits received by the respondent as a result of his or her improper activity, the damage caused to the integrity of the capital markets, the need to deter others from similar conduct, and previous decisions in similar circumstances. Panels will also consider the MFDA Penalty Guidelines.

30. This is the Respondent's first appearance before a disciplinary panel. And even though the amounts involved are relatively minor, the very nature of his conduct is egregious and of a type which brings the capital markets into disrepute. This fact must be reflected in the penalty.

31. The Penalty Guidelines recommend a fine of \$25,000 and a permanent prohibition where client funds have been misappropriated. Considering all relevant factors, we think that this is the appropriate penalty for Allegation # 1. Insofar as Allegation # 2 is concerned, the Guidelines are silent, but in the Panel's view a fine of \$10,000 is appropriate. Past decisions made in similar circumstances support this view: see, for instance, *In re Robert Roy Parkinson*, [2005] MFDA Ontario Regional Council, No. 200501 (where the amounts involved was much larger, but so was the fine), and *In re Stephan Hedley*, [2006] MFDA Ontario Regional Council, No. 200509.

32. Finally, on the matter of costs, we were told that while the actual costs incurred exceed \$10,000, the enforcement department would be content with that sum, and that is, therefore, what we will order.

33. In the result, there will be a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.(c) of MFDA By-law No. 1.

34. In addition, the Respondent is ordered to pay a fine of \$25,000 for violating Rule 2.1.1., as set out in Allegation # 1, and a fine of \$10,000, for violating the Rules enumerated in Allegation No. 2.

35. Costs are assessed in the amount of \$10,000.

36. So ordered.

DATED this 15th day of December, 2010.

"Fred Kaufman"

The Hon. Fred Kaufman, C.M., Q.C.,
Chair

"Hugh McNabney"

T. Hugh McNabney,
Industry Representative

“Selwyn Kossuth”
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Industry Representative

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