



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: Daniel William Yanaky

Heard: January 19 and 20, 2015, in Toronto, Ontario
Reasons for Decision: March 17, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth)	Chair
Brigitte J. Geisler)	Industry Representative
Nick Pallotta)	Industry Representative

Appearances:

Maria L. Abate)	For the Mutual Fund Dealers Association of
)	Canada
)	
Daniel William Yanaky)	In Person
)	
)	

BACKGROUND

1. By Notice of Hearing (the “Notice of Hearing”) dated the 31st day of January, 2014 a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened to hear evidence and submissions with respect to the allegation against Daniel William Yanaky (the “Respondent”) set out in the Notice of Hearing.

2. The Notice of Hearing alleged as follows:

- a) commencing January 2012, the Respondent has failed or refused to provide a written statement to the MFDA as requested by the MFDA during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

3. At the hearing, Staff of the MFDA (“Staff”) called Daniela Capozzolo, Senior MFDA Investigator, who was cross-examined by the Respondent. The Respondent gave evidence and was cross-examined by Staff. Twenty-six (26) documents, including relevant correspondence between the MFDA and the Respondent were marked as exhibits.

FACTS

4. The evidence disclosed:

- a) The Respondent was registered as a mutual fund sales person with IPC Investment Corporation (“IPC”), a Member of the MFDA in the following jurisdictions:
 - (i) Ontario, from October 19, 1999 to January 25, 2012;
 - (ii) Quebec, from August 25, 2008 to December 31, 2009; and
 - (iii) Manitoba, from October 6, 2006 to December 31, 2006.
- b) On January 25, 2012, IPC terminated the Respondent as a result of the events described hereafter.
- c) The Respondent is not currently registered in the securities industry in any capacity.

- d) During the material times, the Respondent conducted mutual fund business from an IPC branch office in Mississauga, Ontario. The Respondent resides in Newmarket, Ontario.
 - e) On or about January 4, 2012, Staff first became aware of the Respondent's involvement in the events described hereafter following receipt of a report submitted by IPC through the MFDA's Member Event Tracking System ("METS"). The report contained a letter from legal counsel representing client JB and her husband JB (a non-client), alleging that the Respondent had recommended that the client invest in an outside business activity they now believed to be a fraud. The activity was referred to as the "Western Project". The lawyer was demanding repayment of the entire amount of the client's investment, approximately \$500,000, in the Western Project, failing which he would commence legal action. This letter was addressed to the Respondent and to IPC;
 - f) On or about January 19, 2012, the MFDA received an updated METS report from IPC confirming that IPC had been served with a Statement of Claim by client JB and JB;
 - g) The client JB and JB agreed to a settlement of their civil action against IPC and the Respondent. The terms of the settlement are confidential and were not before the Panel;
 - h) Thereafter, and on or about December 19, 2013, the MFDA received another METS Report from IPC with respect to the Western Project. The Report contained a further lawyer's letter which alleged that client AM had invested approximately \$430,000 from her aunt's estate into the Western Project as a result of a recommendation by the Respondent. The lawyer was seeking full repayment of the estate's investment, failing which he would commence legal action against IPC and the Respondent;
5. The evidence led at the hearing by the Respondent also confirmed that:
- a) An individual known as WM was attempting to set up a charitable trust (the "Western Project") for the purposes of receiving substantial amounts of money which allegedly were located offshore and had been seized by the Canadian Government. WM was looking for individuals to contribute monies to cover the cost of establishing the charitable trust otherwise known as the Western Project. WM was allegedly processing the necessary application to the Canadian Government;

- b) The Respondent confirmed in his evidence that he acted as an intermediary between the Western Project and its investors by arranging the delivery of investment monies to the Western Project. The Respondent advised that he, from time to time, contacted clients such as JB and AM, and requested further contributions to cover the cost of establishing the Western Project's charitable trust. The Respondent claimed that he personally had invested approximately \$500,000 in the venture.

- c) The Western Project was not an investment or outside business activity that was known to or approved by IPC. The Respondent did not disclose his participation or involvement in the Western Project to IPC. This was in spite of the fact that on two other occasions, the Respondent advised IPC in writing of his involvement in outside business activities that paid him nothing or nominal consideration for his participation. It was clear that the transactions for clients in respect of the Western Project were not processed for the account of or through the facilities of IPC and there is no evidence that the Western Project was a legitimate investment opportunity.

THE ALLEGED FAILURE TO COOPERATE

6. Following receipt of the METS Report on January 4, 2012, the MFDA commenced an investigation of the matter. On January 6, 2012, Staff directed correspondence to the Respondent in which it set out the allegations made by JB and JB. The correspondence specifically requested that the Respondent provide written response to the allegations, including answers to eleven specific questions put to the Respondent. A response was requested by January 30, 2012. In four subsequent letters directed to the Respondent, MFDA investigators repeated their request for a written statement and answers to their questions and also requested that he produce correspondence and emails between himself, the B's, and those allegedly involved in the Western Project. Each correspondence extended the date before which answers were required. The date was eventually extended to June 6, 2012.

7. The Respondent, in his testimony, acknowledged receipt of all the correspondence. In fact, the Respondent replied to the first four of the five letters directed to him by the MFDA investigators. However, in none of his reply correspondence did the Respondent provide a written response to the allegation nor did he provide answers to any of the questions or produce any of the requested documents. Again in his testimony, the Respondent acknowledged that he

had not provided the requested information. To date, the requested information is still outstanding.

8. In response to the allegations, the Respondent has submitted two main arguments:

- a) That the Western Project was a personal philanthropic venture of the Respondent and the persons involved were friends of the Respondent. The Respondent argues that accordingly, the MFDA has no jurisdiction over this personal venture, in essence, that this matter is not an “outside business activity” that must be reported to and approved by the Member. In this respect, MFDA Rule 1.1.1 requires that all securities-related business must be conducted through the Member. Securities-related business is defined by MFDA by-law No. 1 to mean any business or activity that constitutes trading or advising in securities. There is no requirement in the By-law or in the Rules that the outside business activity provide income to the Approved Person. As set out above, the evidence also discloses that the Respondent chose to report to the Member another outside activity that did not provide him with income. The Western Project, as described by the Respondent is clearly an activity that would require full disclosure and approval by the Member. The Respondent’s argument accordingly fails.
- b) That the outstanding civil proceeding brought against the Respondent takes precedent over the MFDA investigation and accordingly, the written responses requested by the MFDA need not be provided. The case law, and in particular, the Supreme Court of Canada decision in *R. v. Fitzpatrick* [1995] 4 S.C.R. 154 makes it clear that a licensed person trading in securities should be presumed to know and to have accepted the terms and conditions of this regulated area namely, that it was one of the conditions of his acceptance for registration that he agreed to be subject to disciplinary action for breach of the By-laws of the MFDA. This is said to be so despite the difficulties faced by the Respondent in that case from possible pending criminal charges. Again, the case law makes it clear that neither civil nor criminal proceedings take priority over the investigations by bodies such as the MFDA. Accordingly, this argument also fails.

9. In coming to its conclusion on this matter, the Hearing Panel has considered Section 21 of MFDA By-law No. 1, which dictates that the 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.

10. Further, in coming to its conclusion, the Hearing Panel has considered all of the evidence presented by both Staff and the Respondent, their respective submissions and the case law to which they have referred us. After doing so, the Hearing Panel is unanimously of the view that a finding of misconduct by failing to cooperate contrary to Section 22.1 of By-law No. 1 has been proven as against the Respondent. The Panel is further of the view that such a finding is imperative for the continued and effective operation of the self-regulatory system in place for mutual fund sales persons.

PENALTIES

11. The Hearing Panel recognizes, as noted above, that this is a serious allegation. Having said that, it is not clear that the Respondent recognizes the seriousness of his improper conduct. He has subverted the ability of the Regulator to perform its function and has intentionally prevented the Regulator from investigating his conduct in a full and expeditious matter. The Panel remains concerned about any damage that may be caused to the integrity of the capital markets. The penalty that is imposed must deter not only this Respondent, but person who would act in a similar manner.

12. In imposing penalty, the Hearing Panel has considered the penalty guidelines and the substantial body of case law that confirms the seriousness of the failure to cooperate allegation. The case law consistently delineates substantial penalties for those found guilty of this conduct.

13. Accordingly, the Hearing Panel imposes the following penalties and costs upon the Respondent:

- a) a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA;
- b) a fine in the amount of \$75,000; and

c) costs payable to the MFDA, in the amount of \$5,000.

DATED this 17th day of March, 2015.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Brigitte J. Geisler”

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Industry Representative

“Nick Pallotta”

Nick Pallotta
Industry Representative

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