



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: Raymond John Zamrykut

Heard: September 24, 2019 in Winnipeg, Manitoba
Reasons for Decision: September 29, 2020

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Richard L. Yaffe, Q.C.
Sean Shore
Greg Wiebe

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Raymond John Zamrykut)	Respondent, in person
)	
)	

I. BACKGROUND

1. By Notice of Hearing dated April 22, 2019, a hearing panel (the “Hearing Panel”) of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened in Winnipeg, Manitoba on September 24, 2019 for a hearing on the merits pursuant to Sections 20 and 24 of MFDA By-law No. 1 in respect of Raymond John Zamrykut (the “Respondent”). The Respondent was present without counsel.

2. The allegations against the Respondent are as follows:

Allegation #1: In May 2014, the Respondent borrowed a total of \$3,100 from two clients, thereby engaging in conduct giving rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member (as hereinafter defined), or failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the policies and procedures of the Member and MFDA Rules 1.1.2, 2.1.4, 2.1.1, and 2.5.1; and

Allegation #2: Between October 2016 and January 2018, the Respondent failed to report to the Member an outstanding garnishment order against the Respondent, contrary to the policies and procedures of the Member, subsection 4.1(h) of MFDA Policy No. 6, and MFDA Rules 1.1.2, 2.1.1, and 2.5.1.

3. The first appearance in the matter was held before the Hearing Panel on June 27, 2019. The Respondent and the MFDA Staff entered into an Agreed Statement of Facts dated July 19, 2019. (“Agreed Statement of Facts”). In accordance with the Agreed Statement of Facts, the matter was heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure. The Respondent admitted the facts set out in the Agreed Statement of Facts, including the allegations set out above, and that such facts constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of the Hearing Panel pursuant to section 24.1 of MFDA By-law No. 1. The purpose of the Hearing was to determine the appropriate penalty for the misconduct to which the Respondent has admitted.

II. FACTS

4. From September 2012 to February 2018, the Respondent was registered in Manitoba as a mutual fund salesperson (now known as a dealing representative) with PFSL Investments Canada Ltd. (the “Member”), a member of the MFDA.
5. On February 7, 2018, the Member terminated the Respondent’s registration, and the Respondent is not currently registered in the securities industry in any capacity.
6. At all material times, the Respondent carried on business in the Winnipeg, Manitoba area.
7. At all material times, the Member’s policies and procedures prohibited its Approved Persons from borrowing money from clients.
8. At all material times, clients RN and SM were clients of the Member whose accounts were serviced by the Respondent.
9. In May 2014, the Respondent borrowed \$2,000 from client RN and \$1,100 from client SM. The Respondent told the clients that he would repay them with interest within one year.
10. The Respondent did not disclose to the Member that he had borrowed monies from clients RN and SM.
11. Clients RN and SM made repeated requests to the Respondent to repay the amounts owing. The Respondent has repaid only \$200 of the \$3,100 that he had borrowed from the clients.
12. The Member compensated clients RN and SM a total of \$2,900 for their loss.
13. At all material times, the Member’s policies and procedures required its Approved Persons to report any material changes to their information on the National Registration Database, including any garnishments outstanding or rendered against them in any civil court in Canada.
14. On January 1 of each of 2015, 2016 and 2017, the Respondent signed the Member’s annual compliance attestations, each time advising the Member that he understood, among other things, that he must not and will not accept cash from a client, nor be involved in any kind of borrowing or lending money arrangement with a client.

15. On October 14, 2016, a party (not clients RN or SM) commenced a small claim (*sic*) court action against the Respondent for \$5,159.19 at the Manitoba Provincial Court. On April 28, 2017, a Notice of Garnishment was issued against the Respondent indicating that he owed \$6,317.63.
16. The Respondent did not report to the Member that he was a party to the court action and that there was a garnishment against him.
17. On or about January 4, 2018, client BG contacted the Member and reported that, in or about January 2017 and then in or about June 2017, the Respondent had sought to borrow monies from her on two occasions. Client BG declined the Respondent's requests.
18. The Member then commenced an investigation into the Respondent's conduct, during which the Respondent admitted to the Member that he requested a loan from client BG, and borrowed \$3,100 from clients SM and RN as described above.
19. On February 7, 2018, the Member terminated the Respondent's registration for having personal financial dealings with clients, and for not disclosing that there was a garnishment against him.
20. On February 26, 2018, the Member sent letters to all clients serviced by the Respondent to determine whether he had engaged in personal financial dealings with any other clients.
21. In response to the Member's letter, clients SM and RN confirmed to the Member that they provided the loans to the Respondent as described above.
22. During the course of its investigation, the Member also identified the garnishment against the Respondent as described above.
23. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.
24. The Respondent admits that:
 - a) he borrowed a total of \$3,100 from two clients in May 2014, thereby engaging in conduct giving rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member or failed to address by the exercise of

responsible business judgment influenced by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 1.1.2, 2.1.4, 2.1.1 and 2.5.1.; and

- b) between October 2016 and January 2018, the Respondent failed to report to the Member an outstanding garnishment order against the Respondent, contrary to the policies and procedures of the Member, subsection 4.1(h) of MFDA Policy No. 6, and MFDA Rules 1.1.2, 2.1.1 and 2.5.1.

III. CONSIDERATIONS AND ANALYSIS

25. Pursuant to the Agreed Statement of Facts, submissions with respect to the appropriate sanctions are to be based only on the agreed facts therein and not on any other facts or documents, other than any evidence presented by or on behalf of the Respondent at the Hearing that is relevant to the Respondent's financial situation.

26. Enforcement Counsel cited and summarized the usual authorities regarding the factors to be considered in determining whether proposed penalties are appropriate, and reviewed the relevant MFDA Sanction Guidelines, all of which are set out in detail in MFDA Staff's submissions.¹

27. Enforcement Counsel's submissions outlined various aggravating factors. These include the fact that the Respondent signed the Member's annual compliance attestations on three separate occasions subsequent to the Respondent's having borrowed the monies, and the fact that the Respondent's failure to disclose that he was the subject of a garnishment order may have deprived the Member from conducting appropriate enhanced supervision.

28. Enforcement Counsel also outlined various mitigating factors, including the absence of past contraventions and the fact that the Respondent has recognized the seriousness of his misconduct, admitted the wrongdoing, and entered into the Agreed Statement of Facts.

¹ Eg. *Breckenridge (Re)*, MFDA File No. 200708, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007.

29. Enforcement Counsel submitted that the penalties in the present case must offer both specific and general deterrence, with an emphasis on general deterrence with respect to the contravening actions. We agree.

30. In applying the Sanction Guidelines to the present case, the Hearing Panel took into account the fact that the Respondent has no prior history of contravention, he has recognized the seriousness of his actions and has expressed remorse, he is no longer registered and has ceased to be an Approved Person, and he entered into the Agreed Statement of Facts. The Respondent's Reply to the Notice of Hearing was included in the materials provided to the Hearing Panel, and offered some explanation for the Respondent's actions and failures to act. All of these are considered to be mitigating.

31. The Hearing Panel considers it a serious and aggravating factor that the Respondent failed to disclose the misconduct until he was confronted, and that the Member learned of the outstanding garnishment order through its own investigation rather than from the Respondent directly. The Hearing Panel also considers it particularly concerning and egregious that annually, on three separate occasions subsequent to having borrowed monies from two clients and while indebted to those clients for monies borrowed, the Respondent signed compliance attestations specifically relating to borrowing money from a client.

32. In his submissions, Enforcement Counsel referred to penalty decisions made in previous similar cases, including *Secord*,² *Mihalovic*,³ *Sarang*⁴ and *Cuthbert*.⁵ The Hearing Panel considered each of these in its determination of penalty.

33. The MFDA Sanction Guidelines permit a Hearing Panel to consider the Respondent's ability to pay when determining the appropriate monetary sanction to be imposed, recognizing that it is only one of the factors to be weighed in relation to all other applicable factors including general

² *Secord*, MFDA File 201908, Hearing Panel of the Central Regional Council, Order dated August 7, 2019.

³ *Mihalovic*, MFDA File 201783, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 18, 2017.

⁴ *Sarang*, MFDA File 201535, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated March 21, 2016.

⁵ *Cuthbert*, MFDA File No. 201013, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated June 8, 2011.

and specific deterrence and the need to maintain public confidence in the MFDA's disciplinary processes.

34. Enforcement Counsel made written and oral submissions with respect to the relevance and weight to be given to evidence relating to the Respondent's ability to pay, and cited relevant precedents⁶ as well as the MFDA Sanction Guidelines for guidance on relevance and burden of proof.

35. While the ability to pay is considered to be a relevant factor in determining penalty, there is general agreement that the principle of disgorgement is paramount and this requires that the penalty should be greater than any financial benefit received by the Respondent. The Hearing Panel took this into account in its determination of the penalty. The Hearing Panel also took into account and accepts Staff's submission that the Respondent's financial position and ability to pay should not outweigh factors such as (i) the need for deterrence, (ii) the importance of the fine being commensurate with the seriousness of the misconduct, (iii) the protection of clients, and (iv) maintaining confidence in the securities industry and the MFDA's regulatory process.

36. Evidence was adduced as to the financial position of the Respondent, including T4 employment income slips for 2017 and 2018. No Notice of Assessment from Canada Revenue Agency for 2018 was produced. It was difficult to establish a clear picture of the Respondent's financial status.

37. The Respondent was invited to speak at the conclusion of the Hearing. He talked about his financial hardship, and he expressed remorse. He explained his employment situation and spoke about his family circumstances. The Hearing Panel found the Respondent's presentation credible and compelling. This was a significant factor in determining the amount of the fine, which is lower than that recommended by MFDA Staff but which exceeds the amount of money paid by the Member to compensate the affected clients, in accordance with the principle of disgorgement. While the Hearing Panel determined that it is appropriate to reduce the financial penalty from that recommended by Enforcement Counsel, in the circumstances of this case and taking into account

⁶ Eg. *Brauns*, MFDA File No. 201203, Hearing Panel of the Central Regional Council, Decision and Reasons dated October 15, 2013; *Popovich*, MFDA File No. 201240, Central Regional Council, Reasons for Decision (Penalty) dated May 27, 2015.

the aggravating factors, the Hearing Panel believes that it is appropriate to impose a prohibition of a duration that exceeds the period of prohibition recommended by Staff.

38. Enforcement Counsel also produced a draft Bill of Costs as evidence of some of the actual incurred costs associated with this matter.

IV. DISPOSITION

39. Pursuant to its Order dated September 24, 2019, the Hearing Panel ordered as follows:

- a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a MFDA Member for a period of 30 months, pursuant to section 24.1.1 (b) of MFDA By-law No. 1;
- b) The Respondent shall pay a fine in the amount of \$5,000, pursuant to section 24.1.1 (b) of MFDA By-law No. 1;
- c) The Respondent shall pay costs in the amount of \$2,500, pursuant to Section 24.2 of MFDA By-law No. 1;
- d) The payment by the Respondent of the fine and costs described above in paragraphs 2 and 3 shall be made to and received by the MFDA in 24 monthly instalments of \$312.50 on or before the final business day of each month commencing in October 2019 and ending in September 2021;
- e) If the Respondent fails to make any of the instalment payments described above in paragraph d), any outstanding balance of the fine and costs owed by the Respondent shall become immediately due and payable to the MFDA;
- f) The Respondent shall in the future comply with MFDA Rules 1.1.2, 2.1.4, 2.1.1, and 2.5.1; and
- g) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

DATED this 29th day of September, 2020.

“Richard L. Yaffe”

Richard L. Yaffe, Q.C.
Chair

“Sean Shore”

Sean Shore
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

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