



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: Azhar Ahmad Batla

Heard (Misconduct): October 11-12, 2022 by electronic hearing in Toronto, Ontario

Decision (Misconduct): October 20, 2022

Heard (Penalty): November 18, 2022 by electronic hearing in Toronto, Ontario

Decision (Penalty): November 18, 2022

Reasons for Decision: June 29, 2023

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth
Brigitte J. Geisler
Robert C. White

Chair
Industry Representative
Industry Representative

Appearances:

Brendan Forbes)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Michael A. M. Mantle)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Azhar Ahmad Batla)	Respondent
)	
)	

I. INTRODUCTION

1. On February 10, 2022, the Mutual Fund Dealer Association (the “MFDA”) issued a Notice of Hearing in respect of this proceeding commenced against Azhar Ahmad Batla (the “Respondent”). The Notice of Hearing was properly served on the Respondent and he attended each and every one of the Hearings in this matter. On the 22nd day of April, 2022, the first appearance in this matter was held before a Chair of the Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “Hearing Panel”). Both Staff and the Respondent attended the first appearance in this matter. On that date, the Chair of the Hearing Panel issued an Order which stated that the Hearing in this matter on its merits would proceed on the 7th and 8th day of September, 2022. Subsequently, at the request of the Respondent, the Hearing of the matter was adjourned to October 11 and 12, 2022.

2. The Respondent filed a Reply to the Notice of Hearing prior to the 24th of May, 2022. The Reply was marked as Exhibit 3 at the Hearing. In his Reply, the Respondent denied both of the allegations set out against him in the Notice of Hearing. Both counsel for Staff and the Respondent personally, attended the Hearing on the merits, which took place October 11 and 12, 2022. Thereafter, and on October 20, 2022, the Hearing Panel issued its decision on the misconduct alleged against the Respondent. A penalty hearing was held on November 18, 2022.

3. From January 2016 to September 2019, the Respondent was registered in Ontario as a dealing representative with the Investors Group Financial Services Inc. (“the Member”), a member of the MFDA. On September 30, 2019, the Member terminated the Respondent as a result of the conduct eventually alleged in the Notice of Hearing. At the time of the Hearing on the merits, the Respondent was not registered in the securities industry in any capacity. At all material times, the Respondent conducted business in the Toronto, Ontario area.

II. THE CONTRAVENTIONS

4. In the Notice of Hearing, it is alleged that:

Allegation #1: Between approximately May 2019 and June 2019, the Respondent misappropriated or obtained monies from a client and deposited the monies into his own account, contrary to MFDA Rules 2.1.1 and 2.1.4.

Allegation #2: In May 2019, the Respondent provided misleading information to the Member on an account form and in response to a Member compliance query, contrary to MFDA Rule 2.1.1.

III. THE FACTS

5. At the Hearing on the merits, the Panel had the benefit of three Affidavits, which were marked respectively as Exhibits 4, 5 and 6 at the Hearing. Exhibit 4 was the Affidavit of Tim Fallows, an investigator in the Enforcement Department of the MFDA. Exhibit 5 was the Affidavit of David Irwin, a Regional Vice-President with Investors Group Financial Services Inc. (“the Member”). Exhibit 6 was the Affidavit of Manocher Jamal, the complainant, who was also an approved person at the time of the Hearing. In addition to the three Affidavits set out above, each of the three affiants were called as witnesses at the Hearing followed by an opportunity for the Respondent to cross-examine each affiant. Where evidence of the three witnesses was in conflict with that of the Respondent, the Panel preferred the evidence of the three witnesses to that of the Respondent.

IV. DISCUSSION

6. In coming to its conclusion with respect to the allegations and facts before it, the Panel was aware that the standard of proof in this case, as in all MFDA and other regulatory proceedings in the securities industry, was the civil standard of a balance of probabilities. The Supreme Court of Canada stated in *F.H. v. McDougall* that “there is only one civil standard of proof at common law and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.” Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test but there is no objective standard to measure sufficiency.

Desgroseilliers (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201790, Reasons for Decision dated August 21, 2018 at para. 15.

MFDA Rule 2.1.1

7. Pursuant to s. 24.1.4 of MFDA By-law No. 1, an Approved Person remains subject to the jurisdiction of the MFDA even after the person ceases to be an Approved Person. In *Taub v. Investment Dealers Association of Canada*, the Ontario Court of Appeal held that there is no statutory impediment preventing self-regulatory organizations, like the MFDA, from continuing to exercise jurisdiction over former Approved Persons.

Section 24.1.4 of MFDA By-law No. 1

8. In the present case, the Respondent was an Approved Person registered with the Member until September 30, 2019. This proceeding was commenced less than five years after the Respondent ceased to be an Approved Person and the limitation period set out in s. 24.1.4 of MFDA By-law No. 1 was not applicable.

9. The Hearing Panels and other regulatory bodies routinely consider and rely on hearsay and affidavit evidence in making findings of fact.

Lam (Re), [2019] Hearing Panel of the Prairie Regional Council, MFDA Hearing No. 201856, Reasons for Decision dated January 25, 2019 at para. 8.

10. Again, having considered the above and with respect to Allegation #2 alleging that the Respondent provided misleading information to the Member, the Panel found that:

- a) On May 22, 2019, the Respondent completed a large value transaction form and submitted the document to the Member, together with the \$70,000 bank draft to be deposited into the Respondent's investment account;
- b) The large value transaction form identified the source of the \$70,000 bank draft as "personal savings from spouse/common law income";
- c) The Respondent's statement on the large value transaction form was false as the source of the \$70,000 bank draft was from client MJ;
- d) The Respondent told David Irwin, Regional Director of the Member ("Mr. Irwin"), that the \$70,000 had been obtained from his spouse and that the withdrawals from his investment account were the result of a miscommunication between the Respondent and his spouse about the amount that was intended for investment;
- e) The Respondent's statement to Mr. Irwin was false, as client MJ was the source of the \$70,000 bank draft.

11. As a result of considering all of the above, the Panel concluded that Allegation #1 and Allegation #2 made against the Respondent had been proven, and that, in fact, the Respondent had breached MFDA Rules 2.1.1 and 2.1.4 as alleged in the Notice of Hearing dated February 10, 2022.

V. PENALTY

12. With respect to the appropriate penalty, the Hearing Panel was aware that pursuant to sections 24.1.1(i) and (j) of MFDA By-law No. 1, a Hearing Panel has the jurisdiction to impose any of the penalties listed in sections 24.1.1(a) – (f) if the Hearing Panel is of the opinion that, among other things:

- a) any person under the jurisdiction of the MFDA has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA; or
- b) has engaged in any business conduct or practice which the Hearing Panel considers unbecoming or contrary to the public interest.

Section 24.1.1 of MFDA By-law No. 1

13. Pursuant to section 24.2 of MFDA By-law No. 1, a Hearing Panel may also require the Approved Person to pay all or part of the costs of the proceeding before the Hearing Panel and the investigation. In this particular case, and marked as Exhibit 5 at the Hearing, was Staff's Bill of Costs in a total amount of \$12,187.50. This amount was not disputed by the Respondent.

Section 24.2 of MFDA By-law No. 1

14. In exercising its discretion to impose a penalty, MFDA Hearing Panels have held that the following factors should be taken into consideration:

- a) the protection of the investing public;
- b) the integrity of the securities market;
- c) specific and general deterrence;
- d) the protection of the MFDA's membership; and
- e) the protection of the integrity of the MFDA's enforcement process.

Tonnies (Re), [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Hearing Panel Decision dated June 27, 2005.

15. Other factors that Hearing Panels frequently consider when determining the appropriate penalty to be imposed on a Respondent include the following:

- a) the seriousness of the allegations proved against the Respondent;
- b) the Respondent's past conduct, including prior sanctions;

- c) the Respondent's experience and level of activity in the capital markets;
- d) whether the Respondent recognizes the seriousness of the improper activity;
- e) the harm suffered by investors as a result of the Respondent's activities;
- f) the benefits received by the Respondent as a result of the improper activity;
- g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) previous decisions made in similar circumstances.

Tonnies, supra, at p. 23.

16. The Hearing Panel may also referred to the MFDA's Sanction Guidelines, which came into effect on November 15, 2018. The Guidelines are not mandatory or binding on the Hearing Panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA Hearing Panels, are also reflected and described in the Guidelines.

MFDA Sanction Guidelines

17. With respect to the factors to be considered in this case, the Respondent's misconducts were very serious.

18. The standard of conduct codified by MFDA Rule 2.1.1, requires that Members and approved persons deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct in the transaction of business and refrain from engaging in any business, conduct or practices which is unbecoming or detrimental to the public interest. The Rule is central to the MFDA mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

MFDA Rule 2.1.1

Breckenridge (Re), 2007 LNCMFDA 38, para. 71.

19. The misappropriation of clients' funds is antithetical to the standard of conduct. It is an egregious form of conduct, which involves a significant breach of trust, causes serious harm to the client and others affected and shakes public confidence in the Canadian mutual fund industry. Accordingly, hearing panels have repeatedly found that the misappropriation or failure to account for clients' moneys is a contravention of MFDA Rule 2.1.1.

Backer (Re), 219 LNCMFDA 14 at paras. 55, 57, 70.

Ng (Re), 2016 LNCMFDA 81 at paras. 89, 106.

McIntosh (Re), 2013 LNCMFDA 58 at paras. 7, 12.

Piggou (Re), 2007 LNCMFDA 31 at para. 54.

20. The Respondent's conduct in Allegation #1 and Allegation #2, clearly contravene MFDA Rule 2.1.1. The Respondent misappropriated funds from client MJ, by falsely inducing him to believe that he was investing their money. As alleged in Allegation #2, the Respondent misled the Member on two different occasions, thereby making it impossible for the Member to fulfill its obligation of regulating the activities of its agents and their interaction with the public.

21. The primary goal of securities regulation is the protection of investors and fostering public confidence in the capital markets and the securities industry. The Hearing Panel recognized that its role when imposing sanctions is not merely the punishment of the Respondent, but restraining future misconduct in furtherance of these goals.

Tonnies (Re), 2005 LNCMFDA 7 at para. 45.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 12 S.C.R. 557 at paras. 59, 68.

Breckenridge (Re), *supra*, at para. 74.

22. The Panel concluded that the Respondent, given the contraventions found against him was a serious risk to the mutual fund industry in the Province of Ontario, and that risk must be terminated by the application of significant specific and general deterrence. The Panel also considered that:

- a) The Respondent has not, either in his Reply, or in his approach to the hearing, shown any contrition for his conduct and its effect on others;
- b) The Respondent benefited from the receipt of at least \$62,000. While a portion of

this was repaid to the client, the client continues to have a financial loss and continues to suffer from a loss of confidence in himself and by other members of his family toward him;

- c) The Respondent has caused significant damage to the integrity of the capital markets and the ability of the MFDA to facilitate the participation of the public in those markets. The misappropriation of clients' funds undermines the necessary trust between the public and the capital markets, harming the mutual fund industry and the capital markets more broadly.

Ayala (Re), 2017 LNCMFDA 23 at para. 11.

VI. RESULT

23. Accordingly, for all the above reasons set out above, the Hearing Panel concluded that the contraventions found against the Respondent were extremely serious. Accordingly, the following penalties were imposed upon the Respondent:

- a) The Respondent is permanently prohibited 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;
- b) The Respondent shall pay a total fine in the amount of \$145,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, consisting of the following:
 - i. a fine in the amount of \$120,000 in respect of allegation #1 in the Notice of Hearing;
 - ii. a fine in the amount of \$25,000 in respect of allegation #2 in the Notice of Hearing;
- c) The Respondent shall pay costs in the amount of \$15,000, pursuant to section 24.2 of MFDA By-law No. 1; and
- d) 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 June, 2023.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Brigitte J. Geisler”

Brigitte J. Geisler
Industry Representative

“Robert C. White”

Robert C. White
Industry Representative

DM 900939