



**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: Bruce Patrick Schriver**

Heard: October 6, 2009 in Halifax, Nova Scotia  
Reasons for Decision: February 24, 2010

**REASONS FOR DECISION**

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, Q.C.  
David Losier  
Scott Kay

Chair  
Industry Representative  
Industry Representative

Appearances:

H. C. Clement Wai )  
)

For the Mutual Fund Dealers Association of  
Canada

Peter Kidston )  
)

For the Respondent

1. By Notice of Hearing, dated March 12, 2009 (File No. 200901), the Mutual Fund Dealers Association of Canada (“MFDA”), made the following Allegation against Bruce Patrick Schriver (the “Respondent”):

**Allegation #1:** Between November 2003 and August 2004, the Respondent borrowed a total of \$40,000 from two clients, thereby:

- a) placing his personal interests above those of the clients and giving rise to a conflict of interest that he failed to address by the exercise of responsible business judgment influenced only by the interests of the clients, contrary to MFDA Rule 2.1.4; and
- b) failing to deal fairly, honestly and in good faith with the clients and engaging in business conduct that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

2. By Notice of Hearing, dated May 19, 2009 (File No. 200918), the MFDA made the following Allegation against the Respondent:

**Allegation #1:** Between December 2000 and June 2004, the Respondent misappropriated approximately \$116,316.22 from Client A, thereby failing to deal fairly, honestly and in good faith with Client A and engaging in business conduct that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

3. On March 20, 2009, the Respondent was served with the first Notice of Hearing (File No. 200901), in accordance with Rule 4.2(1)(c) of the MFDA Rules of Procedure.

4. On May 22, 2009, the Respondent was served with the second Notice of Hearing (File No. 200918), in accordance with Rule 4.2(1)(c) of the MFDA Rules of Procedure.

5. On June 2, 2009, the First Appearance, with respect to both matters, took place, via teleconference, before a Hearing Panel of the Atlantic Regional Council of the MFDA.

6. Rule 7.1(2) of the MFDA Rules of Procedure requires the Notice of Hearing to be served on the Respondent at least 30 days prior to the date of the First Appearance “unless a Hearing Panel orders otherwise.”

7. On consent of the parties, the notice period for the service of the second Notice of Hearing was abridged, in accordance with Rule 2.2(1)(b) of the MFDA Rules of Procedure. Rule 2.2(1)(b) provides as follows: “The time for the performance of any obligation under these Rules may be extended or abridged on consent of the parties prior to the expiration of the prescribed time.”

8. The Hearing Panel made an Order, dated June 2, 2009, that the Hearing on the Merits, with respect to both matters, was to take place, at a venue to be announced, in Halifax, Nova Scotia from October 6, 2009, to October 8, 2009, at 10:00 a.m. (Atlantic) or as soon thereafter as the Hearing could be held.

9. Subsequently, on September 16, 2009, the Hearings Coordinator issued a News Release advising that the Hearing on the Merits would be held in the Hearing Room, located at the Delta Barrington Hotel, 1875 Barrington Street, Halifax, Nova Scotia. Consequently, the public was made aware of the date and location of the Hearing on the Merits dealing with both of these matters.

10. At the commencement of the Hearing on the Merits, on October 6, 2009, the Hearing Panel was presented with an Agreed Statement of Facts, duly executed by the parties and dated October 5, 2009. We were advised that the Agreed Statement of Facts dealt with the factual issues in both Notices of Hearing.

11. In the Agreed Statement of Facts, the parties agreed that the Hearing on the Merits should be heard in public, pursuant to Rule 1.8 of the MFDA Rules of Procedure.

12. On consent, the Agreed Statement of Facts was marked as an Exhibit at the Hearing on the Merits and constituted admissible evidence.

13. The salient portions of the Agreed Statement of Facts are as follows:

**“III ADMISSIONS AND ISSUES TO BE DETERMINED**

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Subject to the determination of the Hearing Panel, Staff submits and the Respondent does not contest 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.

6. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this 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.

7. Staff is seeking a combined fine in respect of both the First Notice of Hearing (“NOH”) and the Second NOH in the range of \$125,000 to \$200,000 and a combined costs award of \$5,000 to \$10,000. The Respondent claims to be impecunious and unable to pay any amount towards either a fine or costs.

**IV. AGREED FACTS**

8. Staff and the Respondent agree to make submissions with respect to the appropriate amount of a fine, if any, and an appropriate award of costs, if any, based only on the agreed facts and Exhibits in this Part IV and no other facts or documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall not be provided to the Hearing Panel without the consent of both Staff and the Respondent.

9. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against it. (sic)

**Registration History:**

10. Commencing June 18, 1999, the Respondent was registered in Nova Scotia as a mutual fund salesperson with Select Money Strategies Incorporated (“Select Strategies”).

11. Select Strategies became a Member of the MFDA on April 16, 2003.
12. On June 1, 2004, the Respondent was terminated by Select Strategies as a result of his involvement in the referral of securities issued by Portus Alternative Asset Management Inc., formerly known as Paradigm Alternative Asset Management Inc. ("Portus"), outside the accounts and facilities of Select Strategies. Such referrals are prohibited under MFDA Rule 1.1.1 and were also contrary to Select Strategies' policies and procedures, which permitted their Approved Persons to only facilitate the sale of securities that had been approved for sale by Select Strategies.
13. On August 14, 2006, the Nova Scotia Securities Commission ("NSSC") made an Order approving a settlement agreement between the Respondent and NSSC Staff, dated June 29, 2006, concerning the Respondent's involvement in the referral of Portus securities. As a term of the settlement, the Respondent's registration was suspended retroactively from June 1, 2004 to June 1, 2006 and the Respondent was ordered to pay an administrative penalty of \$12,500 within 60 days of the Order. The Respondent has not paid the administrative penalty.
14. The Respondent is currently not registered in the securities industry in any capacity. The Respondent states that he is currently employed as a special representative of a management consultant service.
15. The Respondent has not previously been the subject of disciplinary proceedings by the MFDA.
16. The Respondent is currently named as a defendant in civil proceedings relating to his dealings with clients and other individuals. (In a footnote, the parties agreed that "the allegations in these civil proceedings have not been proven and remain before the courts.") Staff and the Respondent agree that those civil proceedings, which are not before this Hearing Panel, do not form the basis for the Respondent's admission of misconduct in this proceeding or the parties' submissions as to the appropriate penalty and costs. Staff and the Respondent agree that the Respondent's admission of misconduct and the Hearing Panel's determination of the appropriate penalty are to be based only on the events in the First NOH and the Second NOH, as described and agreed to below.

**The First NOH:**

17. On November 27, 2003, the Respondent borrowed \$20,000 from clients LD and JD, who are spouses of one another. In exchange, the Respondent provided LD and JD with a promissory note, dated November 27, 2003, pursuant to which he promised to repay LD and JD the sum of \$21,000 by January 15, 2004. The Respondent did not repay the monies by the agreed upon date.
18. On February 9, 2004, \$20,000 was deposited into the clients' bank account. The source of these funds was a cheque in the amount of \$20,000 that

the Respondent provided to the clients, which they deposited in their bank account.

19. On April 6, 2004, the Respondent borrowed \$20,000 from LD and JD a second time but did not provide them with a promissory note or otherwise document the loan with them.

20. Later in April 2004, the Respondent provided LD with a cheque in the amount of \$21,000. LD deposited the cheque into his and JD's bank account but it did not clear because there were insufficient funds in the Respondent's bank account.

21. On June 1, 2004, Select Strategies terminated the Respondent as a result of his sale of Portus securities, as described in paragraph 10 (sic) above.

22. On June 4, 2004, June 5, 2004 and July 29, 2004, the Respondent repaid LD and JD the sums of \$5,000, \$5,000 and \$10,000, respectively. The Respondent made all three payments following his termination by Select Strategies on June 1, 2004.

23. In summary, the Respondent borrowed \$20,000 from LD and JD on two occasions. The Respondent repaid the entire principal amount he borrowed, \$40,000, but did not pay JD and LD the additional \$1,000 he had promised to pay them on the first occasion, or any amount in respect of the second occasion.

24. The Respondent did not disclose to Select Strategies that he was engaging in personal financial dealings with clients before, during or after the transactions described above. Select Strategies Policies and Procedures prohibited any of its Approved Persons from borrowing monies from clients.

### **Misconduct Admitted**

25. By engaging in the conduct described above, the Respondent:

- a) Engaged in personal financial dealings with clients, thereby placing his personal interests above those of the clients, giving rise to a conflict of interest that he failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4; and
- b) failed to deal fairly, honestly and in good faith with clients and engaged in business conduct that was unbecoming and detrimental to the public interest by borrowing monies from them and failing to pay interest promised on those monies, contrary to MFDA Rule 2.1.1

### **The Second NOH**

26. The Respondent had, until the events described below transpired, acted as

a financial advisor for Client A since the 1980's.

27. In 1999, when the Respondent became a mutual fund salesperson with Select Strategies, Client A became a client of Select Strategies and the Respondent was the mutual fund salesperson assigned to Client A's accounts.

28. In December 2000, the Respondent redeemed approximately \$78,483.59 from Client A's account. The net proceeds of the redemption, in the amount of approximately \$75,000, were deposited into an account in the Respondent's name or under his control.

29. In February 2001, the Respondent redeemed approximately \$37,832.63 from Client A's account. The net proceeds of the redemption, in the amount of approximately \$35,950.23, were deposited into an account in the Respondent's name or under his control.

30. In March 2003, in response to a request from Client A regarding the status of his accounts, Client A was informed by Select Strategies that there were no monies or investments remaining in Client A's account.

31. For the purposes of this Agreed Statement of Facts, Staff and the Respondent agree only that the Respondent received the aforementioned redemption proceeds from Client A's account into an account in the Respondent's name or under his control. Staff alleged in the Second NOH, and Client A maintains in pending civil proceedings, that the Respondent took possession of the redemption proceeds without the knowledge, instructions or approval of Client A. The Respondent denies these allegations and states that Client A agreed to lend the redemption proceeds to him. What is not disputed as between Staff and the Respondent is that the Respondent has never repaid the redemption proceeds to Client A. (In a footnote, the parties agreed that "the allegations in Client A's civil action have not been proven. The proceeding remains before the courts in Nova Scotia.")

32. Between March 2003 and 2006, Client A negotiated with the Respondent for the return of the redemption proceeds. In June 2006, the Respondent and his spouse, MS, executed a promissory note in Client A's favour for monies owed to Client A by the Respondent. The Respondent states that the promissory note is evidence of the loan arrangement between the Respondent and Client A. Client A disputes this assertion and states that he executed the promissory note because he was told by the Respondent that he would be repaid the redemption proceeds if he did. What is not disputed is that the Respondent did not make any payments to Client A under the terms of the promissory note and has not otherwise accounted for the redemption proceeds he received from Client A's account.

### **Misconduct Admitted**

33. By engaging in the conduct described above, the Respondent failed to deal fairly, honestly and in good faith with Client A and engaged in business conduct

that was unbecoming and detrimental to the public interest by receiving monies from Client A that he has failed to repay or otherwise account for, contrary to MFDA Rule 2.1.1.”

### **ANALYSIS AND DECISION**

14. It was clear from the Agreed Statement of Facts, and the admissions contained therein, that the Allegations in the first Notice of Hearing were established and we so found at the conclusion of the submissions by the parties.

15. With respect to the second Notice of Hearing, there was a significant change in the Allegation. The initial Allegation was that “between December 2000 and June 2004, the Respondent misappropriated approximately \$116,316.22 from Client A”. (emphasis added)

16. In the Agreed Statement of Facts, the Respondent admitted that, between December of 2000 and February of 2001, he redeemed approximately \$116,316.22 from Client A’s account and that the net proceeds of the redemption, namely approximately \$110,950.23, were deposited into an account in his name or under his control. It was also agreed that the redemption proceeds were never repaid to Client A. The Respondent, however, did not admit to misappropriating the funds.

17. The issue to be determined is whether the agreed upon facts constituted a breach of MFDA Rule 2.1.1, which provides, in part, as follows:

“2.1.1 **Standard of Conduct.** Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.”

18. In the Agreed Statement of Facts, the Respondent admitted that his conduct did breach this Rule.

19. Although there is a dispute as to the characterization of the events which led to

the redemption proceeds from Client A being deposited into the Respondent's bank account, it is clear that the Respondent has failed to either repay those proceeds or otherwise account for them since at least February of 2001. So far as Client A is concerned, the end result of the Respondent's conduct is the same whether it is characterized as a misappropriation or a failure to account. Client A has been deprived entirely of the use and enjoyment of his monies by the actions of the Respondent.

20. In our view, by engaging in the agreed upon conduct, the Respondent has failed to deal fairly, honestly and in good faith with Client A and has engaged in business conduct that was unbecoming and detrimental to the public interest. We find that the Respondent has breached MFDA Rule 2.1.1.

### **PENALTY**

21. The parties jointly submitted 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.

22. The parties differed markedly on whether, in addition to the permanent prohibition, there should be a fine and/or an award towards the costs of the proceedings and the investigation relating thereto.

23. As indicated above, Staff sought a combined fine in the range of \$125,000.00 to \$200,000.00 and a cost award of \$5,000.00 to \$10,000.00.

24. Counsel for the Respondent urged the Hearing Panel not to impose any fine or cost award. He stated that the Respondent had no investments or savings and that his house had been foreclosed upon. He submitted that any fine would be a "paper" fine as his client had no means to pay. He suggested that the Respondent should concentrate on repaying Client A. He urged that the ultimate penalty of a permanent prohibition was sufficient in the circumstances.

25. In exercising our discretion to impose a penalty, we believe that we should consider at least the following:

- a) the protection of the investing public;
- b) the integrity of the securities markets;
- 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 processes.

Re: *In the Matter of Stephan Headley*, [2006] Hearing Panel of the Ontario Regional Council, MFDA File No. 200509, Panel Decision dated February 21, 2006, at page 24.

26. We also reviewed the factors which previous Hearing Panels have indicated should be considered when determining the appropriate penalty. These 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.

Re: *Headley*, supra at pages 25-26.

27. We also believe that it is incumbent upon this Hearing Panel to communicate to

the Respondent, to the public and to the mutual fund industry as a whole that serious consequences will befall those who are engaged in activities similar to those of the Respondent in the instant case.

### **CONSIDERATIONS IN THE PRESENT CASE**

28. a) The conduct of the Respondent was serious.
- b) It was not an isolated incident but rather a series of incidents which took place over a lengthy period of time.
- c) There was no evidence before us of any real attempt by the Respondent to repay Client A despite the fact that the redemptions in question took place almost 9 years before the Hearing on the Merits.
- d) Although the Respondent has no prior disciplinary history with the MFDA, he was the subject of an administrative penalty, in the amount of \$12,500.00, as a result of a settlement agreement with the Nova Scotia Securities Commission which he entered into in June of 2006. That penalty was to have been paid by the middle of October 2006. Despite the passage of three years, it remains unpaid.
- e) There was no evidence before us of any remorse on the part of the Respondent.
- f) On the mitigating side, we were advised that the Respondent cooperated with MFDA Staff during the course of the investigation of this matter.

29. Taking all of these factors into consideration, we believe that a fine against the Respondent in the amount of \$200,000.00 is appropriate pursuant to s. 24.1 of By-law No.1. This is at the upper limit of the range suggested by Staff. At the Hearing on the Merits, we advised counsel that, if a higher fine had been suggested, we would have seriously considered it.

30. We also believe that costs in the amount of \$10,000.00 should be awarded against the Respondent pursuant to s. 24.2 of By-law No.1.

**PENALTIES IMPOSED**

31. In summary, the penalties, which we impose on the Respondent, are the following:

- 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 \$200,000.00 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- c) Costs in the amount of \$10,000.00 pursuant to s. 24.2 of MFDA By-law No. 1.

**DATED** this 24<sup>th</sup> day of February, 2010.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.  
Chair

“David Losier”

David Losier  
Industry Representative

“Scott Kay”

Scott Kay  
Industry Representative