



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: Terry William Sukman

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room at the MFDA offices, located at 121 King Street West, Suite 1000, Toronto, Ontario on September 9, 2015 at 10:00 a.m. (Eastern), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Terry William Sukman (the “Respondent”).

DATED this 21st day of July, 2015.

“Sarah Rickard”

Sarah Rickard
Director of Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
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NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between August 2012 and May 2013, the Respondent accepted and held a power of attorney for property from client XX, and was appointed as estate trustee, executor and trustee of client XX in her Will, contrary to MFDA Rules 2.3.1, 2.1.4 and 2.1.1.

Allegation #2: Between August 2012 and May 2013, the Respondent engaged in personal financial dealings with client XX by:

- (a) accepting an entitlement to a \$10,000 legacy in lieu of executor fees; and
- (b) accepting joint ownership in one account and designation as beneficiary of two accounts held by client XX at the Member,

thereby giving rise to conflicts or potential conflicts of interest between the Respondent and client XX which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interest of client XX, contrary to MFDA Rules 2.1.4 and 2.1.1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. Since July 1986, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA.

2. At all material times, the Respondent conducted business out of a sub-branch located in Mississauga, Ontario.

Background

3. At all material times, Investors Group's policies and procedures expressly prohibited its Approved Persons from acting as power of attorney ("POA") for clients, acting as an executor of a client's estate, or being named as a beneficiary to a client's estate or an Investors Group client account, unless the client is a member of the Approved Person's immediate family under certain conditions.

4. Client XX is an 89 year old widow with no immediate family. Client XX was a client of Investors Group whose accounts were serviced by the Respondent between approximately 2004 and January 2013.

5. Over the years that the Respondent serviced client XX's accounts, the Respondent assisted client XX with her financial and personal affairs, including accompanying her to the bank, preparing and filing her income tax returns, and paying her bills.

6. Beginning in or about 2011, the Respondent observed that client XX's health was declining and her demeanor had changed.

7. Client XX was a vulnerable client.

Power of Attorney and Designation as Executor and Beneficiary in Client XX's Will

8. According to notes maintained by the Respondent in client XX's file, client XX approached the Respondent on May 2, 2012 about becoming what he described as her POA for "financial" and "medical", and becoming executor and a beneficiary of client XX's estate in her Will. The Respondent recorded a note in client XX's file that he would have to cease acting as advisor on client XX's accounts, and notify his branch manager and Investors Group compliance personnel of this information.

9. As described below, XX appointed the Respondent as a POA for both property and personal care in August 2012.

10. On or about July 4, 2012, client XX met with a lawyer to whom the Respondent had referred client XX in relation to her Will and POA.

11. On August 7, 2012, client XX appointed the Respondent both as her sole POA for property, and her POA for personal care, jointly and severally, with client XX's family friend.

12. The Respondent states that it was during the course of Staff's investigation in or about May 2014 that he first became aware that he was appointed as POA for personal care.

13. On August 16, 2012, client XX executed her Will and designated the Respondent as:

- (a) sole estate trustee, executor and trustee of her Will;
- (b) beneficiary of a \$10,000 legacy in lieu of executor fees; and
- (c) beneficiary of any residue of her estate.

14. The Respondent states that it was during the course of Staff's investigation in May 2014 that he first became aware that he was designated as a beneficiary of any residue of client XX's estate.

15. The Respondent did not disclose to Investors Group that he accepted and held a POA from client XX and did not disclose that he was named in any capacity in client XX's Will.

Joint Ownership and Designation as Beneficiary of Client XX's Accounts

16. Client XX held three accounts at Investors Group consisting of: (1) a non-registered account; (2) a Registered Retired Income Fund account ("RRIF"); and (3) a Tax Free Savings Account ("TFSA").

17. In January 2013, the Respondent accepted being added by client XX as:
- (a) the sole beneficiary of client XX's RRIF, which had a balance of approximately \$157,458;
 - (b) the sole beneficiary of client XX's TFSA, which had a balance of approximately \$27,791; and
 - (c) joint owner with client XX on a non-registered account, which had a balance of approximately \$179,391.
18. At this time, the designation of client XX's advisor on her non-registered account was changed from the Respondent to another advisor, and client XX's POA for property was submitted to Investors Group for the first time.
19. The Respondent knew or ought to have known that it was contrary to Investors Group's policies and procedures to be named as a beneficiary of a client's Investors Group account who was not a family member.

Investors Group's Investigation

20. Investors Group detected the Respondent's conduct described above in paragraph 17 during a trade review of the proposed changes to client XX's accounts. Investors Group immediately commenced an investigation into the Respondent's activities.
21. On or about February 22, 2013, Investors Group reversed the transfer of client XX's individual non-registered account to the joint account held by her and the Respondent, and removed the Respondent as beneficiary of client XX's RRIF and TFSA accounts.
22. On or about May 30 2013, client XX removed the Respondent as executor, beneficiary and trustee in her Will.

23. The Respondent no longer holds a POA in respect of client XX.
24. On June 19, 2013, Investors Group placed the Respondent on close supervision.
25. On February 6, 2014, Investors Group issued a letter of reprimand to the Respondent advising him that he contravened Investors Group's policies and regulatory requirements by being appointed as POA for client XX and an executor for client XX's Will, and being named as a beneficiary and joint owner on client XX's accounts.

Allegation #1 - Power of Attorney and Other Similar Authorizations

26. By engaging in the conduct described above, the Respondent accepted and held a power of attorney for property from client XX, and was appointed as estate trustee, executor and trustee of client XX in her Will, contrary to MFDA Rules 2.3.1, 2.1.4 and 2.1.1.

Allegation #2 - Conflict of Interest

27. By engaging in the conduct described above, the Respondent engaged in personal financial dealings with client XX by:

- (a) accepting an entitlement to a \$10,000 legacy in lieu of executor fees; and
- (b) accepting joint ownership in one account and designation as beneficiary of two accounts held by client XX at the Member,

thereby giving rise to conflicts or potential conflicts of interest between the Respondent and client XX which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interest of client XX, contrary to MFDA Rules 2.1.4 and 2.1.1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- (c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- (d) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve** a **Reply** on Enforcement Counsel and **file** a **Reply** with the Office of the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: David Halasz
Fax: 416-361-9073
Email: dhalasz@mfd.ca

A **Reply** shall be **filed** by:

- (a) providing 4 copies of the **Reply** to the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- (b) transmitting one (1) copy of the **Reply** to the Office of the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Office of the Corporate Secretary permits otherwise; or
- (c) transmitting one (1) electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at CorporateSecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- (a) to **serve and file a Reply**; or
- (b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-Laws.

End.

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