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CASE SUMMARY #200805
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MFDA Case Summary

Enforcement

This case summary was prepared by Staff of the MFDA.

Hearing Panel imposes lifetime ban and \$250,000 in fines on Brian Somerset Campbell

Nature of Proceeding

A Hearing Panel of the Pacific Regional Council of the MFDA has imposed disciplinary penalties on Brian Somerset Campbell (the “Respondent”), a former Approved Person of Sterling Mutuals Inc. (“Sterling”), a Member of the MFDA.

By-Laws, Rules, Policies Violated

Following a hearing on June 16, 2008, the Hearing Panel found that the Respondent had:

(a) engaged in discretionary trading contrary to the terms of his registration as a mutual fund salesperson, contrary to MFDA Rule 2.1.1.

(b) collected portfolio management fees from clients for trades he made in their accounts, thereby accepting remuneration from persons other than Sterling for business carried out on behalf of Sterling, contrary to MFDA Rule 2.4.1.

(c) engaged in portfolio management activity contrary to an express condition placed on his registration as a mutual fund salesperson, contrary to MFDA Rule 2.1.1.

(d) in his possession 68 blank pre-signed forms, contrary to MFDA Rule 2.1.1, including 63 trade execution forms for conducting discretionary trading in client accounts and 5 new account application forms for altering KYC information as needed.

(e) made false or misleading statements to the MFDA during the course of an investigation, contrary to MFDA Rule 2.1.1.

(f) failed to produce for inspection and provide copies of documents and other information relevant to matters being investigated by the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

MFDA Rule 2.1.1 states:

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

- (a) deal fairly, honestly and in good faith with its clients;
- (b) observe high standards of ethics and conduct in the transaction of business;
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
- (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

MFDA Rule 2.4.1 states:

Payable by Member Only. Any remuneration in respect of business conducted by an Approved Person on behalf of a Member (or its affiliates or its related Members which have received it from the Member) directly to and in the name of the Approved Person.

No Approved Person in respect of a Member shall accept or permit any associate to accept directly or indirectly, any remuneration, gratuity, benefit or any other consideration from any person other than the Member or its affiliates or its related Members, in respect of the business carried out by such Approved Person on behalf of the Member or its affiliates or its related Members.

Section 22.1 of MFDA By-law No. 1 states:

Investigatory Powers

For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

- (a) to submit a report in writing with regard to any matter involved in any such investigation;
- (b) to produce for inspection and provide copies of the books, records, and accounts of such person relevant to the matters being investigated;
- (c) to attend and give information respecting any such matters; and
- (d) to make any of the above information available through any directors, officers, employees, agents and other persons under the

direction or control of the Member, Approved Person or other person under the jurisdiction of the Corporation;

and the Member or person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the person conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any Member or person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

Penalty

The Hearing Panel imposed the following penalties on the Respondent:

- (a) a permanent ban from conducting securities related business with any MFDA Member;
- (b) aggregate fines of \$250,000; and
- (c) costs of \$7,500.

In its Reasons for Decision the Hearing Panel noted that the Respondent had “engaged in trades for investors without first obtaining specific written instructions for each trade made, contrary to rule 2.3.2 of the MFDA” and noted that in cases where he claimed to have been acting under a Limited Trading Authorization, he had “failed to keep proper books and records respecting trades as required by rule 2.3.3.”

The Hearing Panel also noted that although the Respondent “did not steal from investors”, his practice of charging fees to clients outside the Member was “a very serious matter.”

Summary of Facts

The Respondent was a mutual fund salesperson with Sterling from April 2001 to March 2007. The British Columbia Securities Commission granted the Respondent’s registration with Sterling on the condition that he “not conduct any portfolio management activity, including any discretionary trading.”

The Respondent owned and operated Campbell Asset Management Ltd. (“CAML”). CAML was not registered to conduct securities related business. Starting in 2002, the Respondent began conducting trades in client accounts without each client’s prior consent or authorization. Each year, the clients received an invoice from CAML requesting payment of “portfolio management fees” of up to 3% of the client’s account balance with Sterling at year end.

The Respondent was not registered to engage in discretionary trading or to provide portfolio management services, nor had he obtained the necessary proficiency required under the *Securities Act* (British Columbia) to perform such services. In addition, the Respondent's activities were in breach of the condition placed on his registration.

An on-site inspection of the Respondent's home office revealed that the Respondent had obtained 68 blank pre-signed forms from various Sterling clients.

The Respondent also made false or misleading statements to MFDA investigators in the course of their investigation. In addition, he undertook to provide MFDA investigators with certain documents, however he failed to do so despite repeated requests to cooperate with the investigation.

Breaches of MFDA Rules

By engaging in discretionary trading in client accounts, the Respondent engaged in conduct beyond the terms of his registration as a mutual fund salesperson, and thereby failed to observe high standards of ethics and conduct in the transaction of business and engaged in business conduct or practice that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1(b) and (c).

By collecting portfolio management fees from clients of Sterling, the Respondent accepted remuneration from persons other than Sterling in respect of business carried out by the Respondent on behalf of Sterling, contrary to MFDA Rule 2.4.1.

By engaging in portfolio management activity contrary to the express terms and conditions imposed on his registration, the Respondent acted contrary to MFDA Rule 2.1.1.

By obtaining blank pre-signed forms from clients of Sterling, the Respondent engaged in conduct contrary to MFDA Rule 2.1.1.

By making false or misleading statements to the MFDA in the course of an investigation, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and engaged in business conduct or practice that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1(b) and (c).

For greater detail, see the Hearing Panel's *Reasons for Decision* dated June 26, 2008 which is posted on the MFDA's website in the "Completed Cases" section under "Enforcement".