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: Deborah (Debbie) Louise Bartolini

Heard: May 12, 2016 in Toronto, Ontario
Decision and Reasons: May 24, 2016

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Casimir Litwin	Industry Representative
Susan L. Schulze	Industry Representative

Appearances:

Michelle Pong	)	Counsel for the Mutual Fund Dealers Association of Canada
Deborah Bartolini	)	In attendance by teleconference; not represented by counsel

Background

1. This is a Hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on Thursday, May 12, 2016. An Agreed Statement of Facts, dated May 6, 2016, entered into between Staff of the MFDA and Deborah Bartolini ("Ms. Bartolini" or the "Respondent") is available on the MFDA website and will not be set out in full here. Ms. Bartolini appeared at the Hearing by teleconference. At the conclusion of the Hearing, the Panel reserved its decision. This is our decision and the reasons for the decision.

2. Between August 22, 1994 and December 31, 2013, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with CIBC Securities Inc. ("CIBC" or the "Member"), a member of the MFDA. The Respondent was registered as a branch manager with CIBC from May 13, 2002 to May 14, 2010.

3. She is not currently registered in the securities industry in any capacity. She has recently been employed by a retail company. At all material times, the Respondent conducted business in Welland, Ontario.

Alleged Misconduct

4. Proceedings against the Respondent were commenced by a Notice of Hearing, dated February 3, 2016.

5. The MFDA alleged the following violations of the By-laws, Rules or Policies of the MFDA:

> **Allegation #1**: In August 2013, the Respondent processed a redemption in the amount of $25,000 in the account of client GS without the knowledge or authorization of client GS which she deposited into a joint bank account held by the Respondent's aunt, HLDR and the Respondent's son, RW, and failed to pay back or otherwise account for the money,

thereby engaging in unauthorized discretionary trading and theft, contrary to the Member's Code of Conduct and MFDA Rules 2.3.1(a), 2.5.1, 1.1.2, and 2.1.1.

Allegation #2: Between April 2013 and December 2013, the Respondent engaged in personal financial dealings with clients JF and BF by borrowing from them a total amount of approximately $13,000, thereby failing to ensure that the conflict of interest that arose as a result of the loan was disclosed to the Member and addressed by the exercise of responsible business judgment influenced only by the best interests of clients JF and BF, and failing to deal fairly, honestly and in good faith with the clients, contrary to the Member's Code of Conduct and MFDA Rules 2.1.4, 2.5.1, 1.1.2, and 2.1.1.

Allegation #3: In September or October 2013, the Respondent solicited a personal loan from client EC in the amount of approximately $5,000, thereby engaging in conduct which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member and address by the exercise of responsible business judgment influenced only by the best interests of client EC, and failing to deal fairly, honestly and in good faith with the client, contrary to the Member's Code of Conduct and MFDA Rules 2.1.4, 2.5.1, 1.1.2, and 2.1.1

6. The particulars of the three allegations are set out in the Notice of Hearing. They are repeated in the Agreed Statement of Facts and are also set out in the following paragraphs of these reasons.

7. The Agreed Statement states in para. 14, with respect to the Member's Code of Conduct: "All Approved Persons of CIBC are required to be familiar with and adhere to CIBC's Code of Conduct. Among other things, the Code of Conduct requires Approved Persons to act honestly and with integrity at all times and to refrain from directly or indirectly borrowing money from or other personal property from clients or from engaging in illegal activity such as theft." The following paragraph states: "Between 2003 and 2013, the Respondent provided electronic certification each year attesting to her familiarity with the Member's Code of Conduct and her agreement to adhere to it."

8. The Respondent states in paragraph 4 of the Agreed Statement of Facts: "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 section 24.1 of MFDA By-law No. 1."

Particulars of Allegation #1 – Unauthorized Discretionary Trading and Theft

9. On August 27, 2013, client GS attended a meeting with the Respondent and requested a redemption from her investment account in the amount of $10,000 to pay expenses associated with the installation of a new furnace and air conditioning system at client GS's home

10. At that time, client GS was an 88 year old widow who lived alone. The Respondent had serviced her investment account at CIBC for more than 3 years and client GS placed a high level of trust and confidence in the Respondent.

11. On August 27, 2013, in addition to processing the $10,000 redemption that client GS had requested, the Respondent processed a second redemption in the amount of $25,000 from the investment account of client GS without the knowledge or authorization of client GS. The proceeds from both redemptions were deposited into client GS's CIBC bank account.

12. On August 28, 2013, the Respondent processed a withdrawal in the amount of $25,000 from the CIBC bank account of client GS and arranged for a bank draft for that amount to be issued that was made payable to the Respondent's aunt, HLDR. The monies were subsequently deposited in a joint bank account at another bank that was held in the names of the Respondent's aunt, HLDR and the Respondent's son, RW.

13. On March 17, 2014, CIBC reimbursed client GS the amount of $25,000 plus interest.

Particulars of Allegation #2 – Personal Financial Dealings

14. On or about April 16, 2013, the Respondent borrowed approximately $13,000 from clients JF and BF. The loan to the Respondent from clients JF and BF was not secured by any collateral. The Respondent promised to pay clients JF and BF interest on the loan at a rate of

10% per year. The Respondent provided clients JF and BF with a promissory note in respect of their loan. The promissory note was signed by clients JF and BF and the Respondent and identified the Respondent as the "debtor" in respect of the monies provided by clients JF and BF.

15. The Respondent was aware that the clients obtained the money for the loan from their line of credit at the bank.

16. Several weeks after obtaining the $13,000 loan, the Respondent asked clients JF and BF to lend her an additional $50,000. Clients JF and BF denied the Respondent's request for an additional loan.

17. The Respondent did not disclose to the Member that she had borrowed money from clients and did not advise the clients to seek independent legal or other professional advice before entering into the loan agreement.

18. From June 5, 2013 to December 18, 2013, the Respondent made 7 monthly payments of $420 each, totaling $2,940, to clients JF and BF.

19. In March 2015, CIBC paid $10,060 to clients JF and BF to reimburse them for the portion of the loan that had not been repaid by the Respondent.

Particulars of Allegation #3 – Soliciting a Loan from a Client

20. In September or October 2013, the Respondent approached client EC and solicited a personal loan in the amount of approximately $5,000. Client EC denied the Respondent's request for a loan. At the time of the Respondent's request, client EC was 86 years old.

Misconduct Admitted by Respondent

21. With Respect to Allegation #1 – Unauthorized Discretionary Trading and Theft, the Respondent admitted as follows:

> "By performing an unauthorized redemption in the account of client GS, the Respondent engaged in unauthorized discretionary trading, contrary to MFDA Rules 2.3.1(a) and 2.1.1. By making an unauthorized withdrawal of monies from the account of client GS and depositing the proceeds in a joint bank account of her family members, the Respondent engaged in theft and failed to deal fairly, honestly and in good faith with client GS, contrary to the Member's Code of Conduct and MFDA Rules 2.5.1, 1.1.2 and 2.1.1."

22. With Respect to Allegation #2 – Personal Financial Dealings, the Respondent admitted, as follows:

> "By borrowing monies from clients JF and BF, the Respondent engaged in personal financial dealings with clients JF and BF, which gave rise to a conflict of interest between the Respondent and clients JF and BF which the Respondent failed to disclose to the Member and failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, and failed to deal fairly, honestly and in good faith with the clients, contrary to the Member's Code of Conduct and MFDA Rules 2.1.4, 2.5.1, 1.1.2, and 2.1.1."

23. With Respect to Allegation #3 – Soliciting a Loan from a Client, the Respondent admitted as follows:

> "By soliciting a personal loan from client EC, the Respondent engaged in conduct which gave rise to a conflict or potential conflict of interest between the Respondent and client EC which the Respondent failed to disclose to the Member and failed to ensure was addressed by the exercise of responsible judgment influenced only by the best interests of the client, and failed to deal fairly, honestly and in good faith with the client, contrary to the Member's Code of Conduct and MFDA Rules 2.1.4, 2.5.1, 1.1.2, and 2.1.1."

24. The Respondent has therefore admitted the conduct alleged and that it is a breach of MFDA Rules. Our task is to determine the penalty to be imposed.

Penalty

25. Paragraph 5 of the Agreed Statement of Facts states:

"Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent is:

(a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to section 24.1.1 of MFDA By-law No. 1;

(b) a fine in the range of $50,000 to $75,000, pursuant to section 24.1.1(b) of MFDA By-law No.1, and

(c) costs in the amount of $5,000, pursuant to section 24.2 of MFDA By-law No. 1.

26. Note that para. 5 states that the determination of the penalty is "subject to the determination of the Hearing Panel." The Panel therefore, it appears, has the authority to determine a higher or lower penalty than that put forward by Staff and which is not opposed by the Respondent.

27. We have concluded that we should, unless there are strong reasons to the contrary, respect the Agreed Statement of Facts, just as we would if this had been a Settlement Agreement, where a Panel can either accept or reject a Settlement Agreement, but cannot vary it. As many previous Panels have stated: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." (See, for example, *Re Menashe Keshet*, File No. 201419 and *Re Patrick Cronin*, File No. 201414).

28. We should respect the Agreement because we do not know what factors influenced the parties to agree to a Settlement or, in the present case, an Agreed Statement of Facts. Settlements are in the public interest. As the British Columbia Court of Appeal stated in a B.C. Securities Commission case (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49):

"Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing they are effective in accomplishing the purposes of the

> statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation."

29. Let us look at some of the factors that have influenced us with respect to the penalty in this case. The first is the seriousness of the allegations. There is no question that these are very serious matters. In the securities industry, few allegations can be more serious than theft from a client. We agree with counsel for the MFDA that the conduct relating to theft in Allegation #1 is "egregious."

30. Borrowing from a client is also a serious matter. As stated by the Panel in *Re Muchoki Fungai Simba* (File No. 201114 at paras. 13-14):

> "Borrowing money from clients is a clear conflict of interest under MFDA Rule 2.1.4, which states: 'Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.
>
> The present case and many other MFDA cases show the danger of borrowing from clients. There are many such cases on the MFDA website. See, for example, some of those decided in 2011: *Carmel Toussaint* in September 2011; *James Woloshen* in June 2011; *Michael Ryan* in April 2011; and *Christopher Jones* in February 2011. As the panel stated in the *Ryan* case: 'Borrowing money from a client has consistently been held by other panels to be a conflict of interest under Rule 2.1.4...even though borrowing is not specifically mentioned in the Rules.'"

31. In the Respondent's favour is the fact that she has not in the past been the subject of disciplinary proceedings and cooperated with the MFDA in its investigation of the allegations in this case.

32. We also note that the clients were fully reimbursed by CIBC.

33. We agree with counsel for the Respondent that this is a clear case for a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to section 24.1 of MFDA By-law No. 1.

34. We also think that the proposal that the Respondent pay costs of $5,000 is reasonable.

35. The Statement of Facts sets out a range from $50,000 to $75,000 for a fine. The actual amount will, in fact, probably not affect the Respondent. The Agreed Statement of Facts states that "the Respondent claims to be impecunious and unable to pay any amount towards either a fine or costs." Still, the amount set by the Panel sends a message to those in the industry.

36. Should the fine be at the higher or lower level of the proposed range? We conclude that it should be set at $50,000, the lower level. The Respondent has not been the subject of prior disciplinary proceedings, has cooperated with the MFDA, has accepted responsibility for her conduct, and has shown remorse in her statement to the Panel. Moreover, the clients were fully reimbursed by CIBC.

37. A further factor that we considered is that there are also criminal charges against the Respondent arising from her conduct and therefore the securities industry does not have to rely on the regulatory process – as it is entitled to do (see *Re Cartaway Resources Corp.* [2004] 1 S.C.R. 672) – for general deterrence, as it would if there were no criminal charges. As stated by the Panel in *Re James Woloshen* (File No. 201029 at para. 33):

> "Another factor is the serious criminal penalty that was handed down by the criminal court. The Respondent now has to live with a criminal record, with all the consequences that these convictions involve. He has been given a significant punishment which will serve as a deterrent to others. Deterrence of others is not therefore as necessary in this case as in others. The MFDA disciplinary cases that were cited to us did not indicate that there had been a prior criminal conviction."

38. We therefore order a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member; a fine of $50,000; and costs of $5,000:

DATED this 24th day of May, 2016.

"Martin L. Friedland"

Martin L. Friedland, C.C., Q.C.
Chair

"Casimir Litwin"

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Industry Representative

"Susan L. Schulze"

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