



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: Ayokunnu Are

Heard: July 8, 2015 in Toronto, Ontario
Decision and Reasons (Penalty): October 16, 2015

**DECISION AND REASONS
(PENALTY)**

Hearing Panel of the Central Regional Council:

The Hon. Edward Saunders, Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Robert C. White	Industry Representative

Appearances:

Charles Toth)	For the Mutual Fund Dealers Association of
)	Canada
)	
Joseph C. Bird)	Advisor to the Respondent
)	
)	
Ayokunnu Are)	Not in attendance

1. Following our [decision on the misconduct](#) of the Respondent dated October 20, 2014, the Hearing Panel reconvened to deal with the issue of penalty. As noted above, the Respondent did not appear. It should be made clear that the non-appearance was noted as a matter of record and has no bearing on our decision with respect to penalty.

2. The Staff of the MFDA (“Staff”) requested the imposition of the following penalties and costs:

- a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity over which the MFDA has jurisdiction pursuant to s. 24.1.1.(e) of MFDA By-law No. 1;
- b) a total fine in the amount of \$850,000 pursuant to s. 24.1.1.(b) of MFDA By-law No. 1, consisting of the following:
 - i. a fine in the amount of \$800,000 (i.e., approximately 1½ times the amount of the commissions and fees received by the Respondent) in respect of the Respondent’s activities pertaining to the sale of the promissory notes;
 - ii. a fine in the amount of \$50,000 in respect of the Respondent’s failure to cooperate with MFDA Staff’s investigation into his conduct; and
- c) costs in the amount of \$29,049, including the costs attributable to the Respondent’s motions to dismiss the proceeding and remove the Chair of the Hearing Panel, pursuant to s. 24.2 of MFDA By-law No. 1.

3. In support of the request, Staff stressed the need for (i) the fine to be proportionate to the benefit received by the Respondent; (ii) the penalty to reflect the harm to the investors; (iii) specific deterrence because although he is no longer in the industry, the Respondent fails to recognize that he has done anything wrong; (iv) general deterrence to other members of the industry so that they will recognize the consequences of misconduct; (v) a recognition that

because of his conduct there is a risk if he remains in the industry, and (vi) a penalty which is consistent with previous decisions.

4. The Respondent submitted:

- a) that there is a mitigating factor in that the Respondent did provide assistance to some of the investors and actually paid money to at least one of them;
- b) that the MFDA and the Decision and Reasons (Misconduct) ignores the involvement of FundEX who should bear some responsibility for what occurred. It was submitted that the Respondent joined FundEX so that he could participate in the sale of the JYL Notes and that he was recruited for that purpose. It is also submitted that FundEX gave him no training, and delayed his audit and that consequently FundEX's failure should be taken into account in considering penalty.

Prohibition

5. There is no evidence the Respondent ever informed FundEX of the JYL transactions involving FundEX's clients while he was registered with FundEX or that he ever attempted to process the transactions through the FundEX books. The Respondent testified at the Hearing on the Merits that he was recruited to sell the JYL products through FundEX and that was what he wanted to do. Yet he never informed FundEX of a single one of the many JYL transactions he was involved in contrary to the MFDA Rules. The conduct of FundEX may have been deficient as submitted by the Respondent but does not excuse the Respondent from disclosing the transactions and failing to process them through the books of FundEX. On that basis we agree with the MFDA that there should be a permanent prohibition.

Fine

6. The MFDA requests that we impose a fine of \$850,000. It is not disputed that the Respondent received commissions and fees of at least \$528,000. In addition, the Respondent

failed to cooperate with the MFDA by failing to disclose a relevant bank account and redacting statements from another account. The Respondent submits that the fine should be less than requested because of the efforts made by the Respondent to recover the lost monies for his clients which efforts were based on the client agreeing not to make a claim against him. Some amounts have been recovered but the amount of them is not known. Nevertheless, the Respondent received at least \$528,000 as a result of his involvement in the JYL transaction. While the fine should be set at least at the amount of remuneration received by the Respondent, and according the MFDA guidelines may be as much as three times that amount plus an amount for failure to cooperate, we consider \$850,000 to be high in the circumstances and would impose a fine of \$725,000 (\$700,000 for the misconduct and \$25,000 for the failure to cooperate).

Costs

7. The MFDA asks for costs of \$29,049. This was a long case and there were several matters that had to be dealt with in addition to the usual procedures. The detailed costs set out in Schedule 'A' of Staff's Submissions are reasonable in the circumstances. However, the amount requested is much higher than the usual case in an MFDA hearing which tend to be between \$5,000 and \$15,000. In this case we consider the amount of \$20,000 to be appropriate.

8. An order will go in accordance with these reasons.

DATED this 16th day of October, 2015.

"Edward Saunders"

The Hon. Edward Saunders, Q.C.
Chair

"Brigitte J. Geisler"

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Industry Representative

“Robert C. White”

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