



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: Diedre Ann Ferguson

Heard: April 4, 2013 in Toronto, Ontario
Reasons for Decision: April 17, 2013

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney)	Chair
Kenneth Mann)	Industry Representative
Vlasios Kardaras)	Industry Representative

Appearances:

Lyla Simon)	For the Mutual Fund Dealers Association of Canada ("MFDA")
)	
Diedre Ann Ferguson)	Did not appear either in person or by Counsel
)	
)	

BACKGROUND

1. We were constituted as a Hearing Panel of the Central Regional Council of the MFDA concerning a disciplinary proceeding commenced by the MFDA against Diedre Ann Ferguson (“the Respondent”).

2. In the Notice of Hearing dated the 7th day of November, 2012,¹ the MFDA alleged as follows:

Allegation #1: Commencing in or about October 2010, the Respondent failed to cooperate with an MFDA investigation by failing to comply with a request by MFDA Staff that she provide a written statement concerning certain matters under investigation and attend for an interview, contrary to section 22.1 of MFDA By-law No. 1.

3. The Respondent was duly served with the Notice of Hearing, but did not appear at the teleconference hearing held on January 15, 2013.

4. On January 15, 2013 the Hearing Panel ordered that the hearing on the merits would take place before the MFDA Hearing Panel on April 4, 2013, in the MFDA hearing room located at Suite 1000, 121 King Street West, Toronto, Ontario, commencing at 10:00 a.m. The MFDA posted the Order on its website the same day.

5. On March 25, 2013 the MFDA announced a change of venue for the hearing which would take place before the Hearing Panel in the hearing room at Atchison & Denman Court Reporting Services, 155 University Avenue, Suite 302, Toronto, Ontario. Mr. Marco Wynnyckyj, Hearings Coordinator for the MFDA, wrote to the Respondent² informing her of the change of venue. The change of venue Order was also posted on the MFDA’s website on March 25, 2013.

6. The Respondent failed to file and serve a Reply. She did not attend the Hearing on

¹ Exhibit 1

² MFDA letter dated March 25, 2013

January 15, 2013. In these circumstances,³ the Hearing Panel may accept the facts alleged and conclusions drawn by the Staff of the MFDA in the Notice of Hearing dated November 7, 2012.

7. The Respondent was arrested in August 2010, and charged along with two others with numerous offences under the Criminal Code of Canada relating to their alleged possession and use of confidential client information for the purpose of engaging in identity theft. The charges against the Respondent were either dismissed or withdrawn against her by October 2011.

8. Counsel filed an affidavit of Stephen Davis, a senior investigator for the MFDA.⁴ In his affidavit, Mr. Davis swore, among other things, that the Respondent failed to cooperate with MFDA Staff's investigation into her activities, notwithstanding that MFDA Staff made numerous attempts to contact the Respondent in order to obtain her statement.

SUBMISSIONS

9. Ms. Simon filed written submissions on the allegation, the appropriate penalties and the costs she was seeking. She also filed an extensive book of MFDA rules, By-law No. 1, penalty guidelines and relevant case law. She relied on Mr. Davis's affidavit and filed a FedEx receipt⁵ listing the attempts made by Staff to contact the Respondent in March 2013 and elicit a response from her. She pointed to the affidavit and the FedEx receipt as proof that the Respondent ignored all but one request from MFDA Staff for information and a meeting with Staff.

10. Commencing on October 1, 2010, the Respondent has failed or refused to provide documents, information, and a written statement to the MFDA and to attend an interview requested by the MFDA during the course of an investigation, contrary to s. 22.1 of MFDA By-law No. 1.

11. Counsel argued that failure to cooperate with the MFDA by an Approved Person is serious misconduct. If an Approved Person fails to provide information in the course of an investigation, then the integrity of the self-regulatory system and the effectiveness of its

³ MFDA Rule 8.4(1)(b)

⁴ Exhibit 3

⁵ FedEx Receipt No.799360448699

operation are compromised.

12. The Respondent ignored the MFDA's request for information and for a meeting and in doing so breached By-law No. 1.⁶

13. Counsel drew the Hearing Panel's attention to the relevant case law. She relied heavily on a recent decision of a Hearing Panel of the Pacific Regional Council⁷ where the facts were similar to those here. She argued that the Respondent should be prohibited for life from conducting a securities related business in any capacity and should suffer a larger fine than the "normal" \$50,000 levied in cases of this kind. She, therefore, asked for a penalty for failure to cooperate with the MFDA of \$100,000 and for costs to be imposed to indemnify the MFDA, at least in part, for the costs incurred for preparing the case and acting at the Hearing.

DECISION

14. After Counsel had completed her submissions, the Hearing Panel ruled that she had proven her case on a balance of probabilities. The members of the Hearing Panel said that they would sign the Order as soon as it was prepared, which Order would then be published on the MFDA's website. The Chair said that the Hearing Panel would, in due course, deliver brief reasons. The following are those reasons.

REASONS

15. The Respondent was registered as a mutual fund salesperson with Monarch Wealth Corporation ("Monarch") when she was caught by the Toronto Police on August 30, 2010 with hard copies of documents pertaining to 64 clients of Monarch and two other individuals.

16. The Respondent was arrested and charged. Monarch suspended her.

17. Monarch conducted an intensive investigation after which Monarch concluded that 15 of the 64 clients were victims of identity theft.

⁶ Section 22

⁷ *Harvey*, MFDA Case No. 201112 (Decision of the Pacific Regional Council), dated March 14, 2012

18. Commencing October 1, 2010, the MFDA tried to contact the Respondent as detailed in paragraph 27 of the Notice of Hearing and the FedEx receipt.⁸

19. The only response that the MFDA received was a letter from the Respondent dated October 15, 2010 in which she said that she did not “feel comfortable with answering the majority of the questions” as the matter was before the criminal courts.

20. Notwithstanding that the charges against her were either dismissed or withdrawn by November, 2011 she continued to ignore Staff of the MFDA.

21. The Respondent’s failure to assist the Regulator is a serious breach of duty. It prevents the MFDA from performing its regulatory function. It inhibits its investigation as it is unable to determine all of the facts and the full extent and implications of the underlying events.

PENALTIES

22. The Respondent, by her actions, has ruined her securities career and will be punished. The Hearing Panel is, however, more concerned with protecting the public, deterring others and maintaining the integrity of the public securities markets and the MFDA’s enforcement processes.

23. The Hearing Panel notes that the Respondent has no previous disciplinary record. The Hearing Panel gave very little weight to that fact. It was more than offset by her failure to cooperate and the lack of remorse by the Respondent.

24. The Hearing Panel held that the penalties proposed were within the range of appropriateness and imposed the following on the Respondent at the conclusion of the hearing:

- (a) a permanent prohibition from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member;

⁸ Op.cit. Footnote 5

(b) a fine of \$100,000; and

(c) costs of \$7,500.

DATED this 17th day of April, 2013.

“Terrance A. Sweeney”

Terrance A. Sweeney,
Chair

“Kenneth Mann”

Kenneth Mann,
Industry Representative

“Vlasios Kardaras”

Vlasios Kardaras,
Industry Representative

DM 335281 v2