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: Dennis Villarin

Heard: April 23, 2014 in Winnipeg, Manitoba
Reasons for Decision: July 9, 2014

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Robert Hucal	Chair
Patricia Kloepfer	Industry Representative
Greg Wiebe	Industry Representative

Appearances:

Charles Toth	)	Senior Enforcement Counsel, Mutual Fund Dealers Association of Canada
Dennis Villarin	)	Not present nor represented by Counsel

Introduction

1. By Notice of Hearing dated November 25, 2013, the Mutual Fund Dealers Association of Canada ("MFDA") commenced disciplinary proceedings and we were constituted as a Hearing Panel, in the matter of Dennis Villarin ("Respondent") pursuant to Sections 20 and 24 of MFDA By-Law No. 1.

2. The Notice alleged that the Respondent had engaged in conduct contrary to the By-Law, Rules and Policies of MFDA:

> **Allegation #1**: Between March 2006 and February 2008, the Respondent prepared and submitted new client account forms and loan applications for 14 clients which the Respondent knew or ought to have known contained, false, incorrect or misleading information, thereby failing to observe high standards of ethics and conduct in the transaction of business and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.
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> **Allegation #2**: Between March 2006 and February 2008, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, features and costs of a leveraged investment strategy that he recommended and implemented in the accounts of 14 clients, thereby failing to ensure that the leveraged investment strategy was suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.
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> **Allegation #3**: Between March 2006 and February 2008, the Respondent failed to ensure that the leveraged investment strategy that he recommended and implemented in the accounts of 14 clients was suitable for the clients and in keeping with their investment objectives, having regard to the clients' relevant "Know-Your-Client" information and financial circumstances, including, but not limited to, the clients' ability to afford the costs associated with the investment loans and withstand investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #4: Commencing in June 2012, the Respondent failed to attend for an interview during the course of an investigation of his conduct by the MFDA, contrary to s. 22.1 of MFDA By-Law No. 1.

3. The First appearance was held on November 25, 2013, when no-one appeared on behalf of the Respondent.

4. Initially the Respondent responded to information requests by MFDA, but ceased connection once he was informed he was the subject of an investigation into his sales practices while registered as a mutual fund salesman with WFG Securities of Canada Inc. ("WFG").

5. The Respondent has not contacted the MFDA since January 31, 2012 when he became aware of the investigation. The Respondent advised that materials could be sent to him at his parents' address. No alternative address was provided.

6. Service of the Notice of Hearing was attempted at his parents' Winnipeg address, without success.

7. The Notice of Hearing and the date of Hearing is posted on the MFDA website accessible by the public. Prior to the Hearing, MFDA attempted to contact the Respondent first by mail at his last known address, then by leaving contact information with his apparent current employer, then by his last known e-mail address and voicemail to his last known telephone number and lastly, through his Facebook account. No response was received.

8. The Panel has determined that steps taken by Staff to serve the Respondent, described above, constitute good and sufficient service having regard to the requirements of MFDA Rule of Procedure 4.2(1)(a).

Registration History

9. The Respondent was registered in Manitoba as a mutual fund salesperson with PFSL Investments Ltd. from February 2004 to September 2005. Subsequently, in October 2005 to August 2009, the Respondent was registered with WFG. All events described occurred while the Respondent was registered with WFG and conducted business through the Winnipeg branch of WFG. The Respondent is not currently registered in the securities industry in any capacity.

Discussion

10. The events at issue in this proceeding came to the attention of the MFDA as a result of complaints from 14 clients who were serviced by the Respondent. The complaints allege that the Respondent engaged in conduct as follows:

11. Recommended and facilitated implementation of a leveraged investment strategy in their WFG accounts where the clients used borrowed monies to purchase return of capital ("ROC") mutual funds. The strategy was based on the premise that the mutual funds would generate sufficient monthly payments to pay the costs associated with the loans. The clients borrowed a combined total of $1,525,000 for the purpose of investing, based on the Respondent's recommendation. None of the clients had previously borrowed money to invest.

Allegation #1 – False and Misleading Loan Applications and New Account Forms

12. In the course of implementing the investment strategy, the Respondent prepared and submitted new account forms and loan applications for 7 of 14 clients which: a) inflated market values of properties; b) reported assets which did not exist; c) reported investments which were not owned by the clients; d) failed to report material liabilities; and e) reported income which was not being received.

13. The Respondent's conduct increased the likelihood that the lender would approve the loans and made it appear that the clients satisfied WFG's requirements. This behaviour was in the context of WFG's requirement that the Respondent assess and determine the suitability of the

investment recommendations.

14. The policies established by WFG required that the Respondent carefully assess and determine whether or not the leveraged investment recommendations were suitable for the client considering certain parameters, including the requirement that the client have a good investment knowledge, a high risk tolerance, a long-term investment outlook, no margin loans, any borrowed amount not exceed 50% of the client's net worth; and the ability to service the debt using personal income.

Allegation #2 – Failure to Explain Leveraged Investment Strategy

15. The Respondent, in recommending and facilitating implementation of a leveraged investment strategy on the accounts of 14 clients, made one or more of the following representations:

a) that the investment would not require any out-of-pocket expenses to cover loans;
b) that generated monthly proceeds would pay loan costs;
c) that no money would be lost;
d) that value of the investments would not decline;
e) that monies would double in value to service loans;
f) that the mutual funds would pay 12% - 13% annually, guaranteed for 7 years;
g) that the leveraged investment strategy was low risk.

16. In making the recommendation, Villarin failed to explain that the investment strategy had associated material risks; that payments by the ROC mutual funds could be reduced, suspended or cancelled; that the investors might be forced to incur out-of-pocket expenses; that other sources of income might be required to pay investment loans; and that increased interest rates might affect projections concerning proceeds anticipated.

17. In fact, all of the possible unexplained events aforesaid did occur and the investors suffered losses in varying amounts.

Allegation #3 – Unsuitable Leveraging Recommendation

18. It was determined that none of the clients could afford to pay the costs associated with the strategy, namely the costs of servicing the loans or to withstand the losses arising from the strategy.

19. The investors suffered losses of $400,000, excluding distributions. The Respondent sent a letter to his clients on August 11, 2010 admitting, among other matters, his error in "giving these types of transactions to all of you". At the same time he deflected responsibility to WFG, as they "were aware of what was being done to clients" in selling the leveraged investment strategy.

20. Similarly, in his January 13, 2012 correspondence with the MFDA, the Respondent clearly identified WFG as being responsible for developing the strategy, for providing no guidelines and training which only "told us how easy it was to get loans for clients" and emphasized only positive aspects of the strategy.

21. Three respondents in other MFDA proceedings, where we have rendered decisions, namely A. Sobrevilla, C. Sulkers and D. Gragasin, admitted recommending and facilitating implementation of the leverage investment strategy in an improper manner and which was unsuitable for clients. Those respondents each stated they were trained by the Respondent Villarin to recommend and implement the strategy.

Allegation #4 – Failure to Cooperate

22. On December 12, 2012, MFDA Staff notified the Respondent by letter that his recommendation relating to leverage investments for his WFG clients was being reviewed and requested a written response. No response resulted from that date forward and confirmed attempts to communicate by letter, email, voicemail and personal services failed. The Respondent has not responded to MFDA since the initial letter request.

23. MFDA Rules provided for service of Notice of Hearing and Staff made reasonable efforts to serve the Respondent, including service to a family member.

24. The effect of the Respondent's failure to reply does not preclude the Hearing Panel from proceeding.

Misconduct

25. The Respondent, in preparing incorrect loan applications and New Client Account forms, engaged in conduct and practice detrimental to the public interest and failed to deal honestly and in good faith with his clients.

26. The Respondent failed to fulfill the suitability obligations by ignoring the "Know-Your-Client" rules in failing to learn about the clients, their personal financial situations, financial situation, investment experience and objectives and their risk tolerance. Failure to comply is a serious matter.

27. The Respondent also failed to explain the investment strategy proposed and again totally ignored the obligation to disclose material relevant information regarding the investment, including the negative aspects of the transaction. There was admittedly no balanced presentation or information afforded.

28. The evidence provided by Sobrevilla, Sulkers and Gragasin is that the Respondent was a key figure at WFG in promoting the use of the leverage investment strategy to other mutual fund salespersons to generate business. The evidence showed that each of the aforementioned salespersons exhibited the same serious breaches in their sales practices with similar serious effects on their clients.

Penalty

29. The proposed penalty, which as a Panel we confirm and support is:

a) a permanent prohibition on the Respondent's authority to conduct securities related business while in the employ of or associated with any MFDA member;
b) a fine of $250,000; and
c) costs of $10,000.

30. We have considered the facts in determining our penalty decision and find that:

a) The allegations proved are serious. In particular, the false information provided and failure to comply with "Know-Your-Client" suitability obligations are serious breaches of the Respondent's obligation;
b) The harm suffered to investors was extensive. The Respondent's activities resulted in losses to his clients of at least $400,000 and more than $1,500,000 of investment monies exposed;
c) The risk to investors and capital markets exists if the Respondent were to continue in business. The Respondent's conduct not only affected his clients but extended to other Approved Persons who were improperly instructed or trained, causing harm to their clients;
d) The damage caused to the integrity of the markets, although not immediately defined, has occurred by reason of the Respondent's actions;
e) The need to alert and deter is, we believe, reflected at least in the permanent prohibition;
f) The Respondent did not respond to the disciplinary proceeding, so he is either unwilling to or does not recognize the seriousness of his misconduct; and
g) The proper penalties are consistent with previous decisions made in similar circumstances.

31. Having regard to the foregoing, we are of the opinion that the penalties are reasonable and proportionate having regard to the conduct of the Respondent and the circumstances of this case.

DATED this 9th day of July, 2014.

"Robert Hucal"

Robert Hucal
Chair

"Patricia Kloepfer"

Patricia Kloepfer
Industry Representative

"Greg Wiebe"

Greg Wiebe
Industry Representative

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