



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTION 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Christopher Raymond Phillips

Heard: March 10, 2015 in Saint John, New Brunswick
Reasons for Decision: August 28, 2015

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Edward W. Keyes	Chair
Ann C. Etter	Industry Representative
Jason P. Downey	Industry Representative

Appearances:

David Halasz)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Christopher Raymond)	Not present nor represented by counsel
Phillips)	
)	

1. By Notice of Hearing dated October 6, 2014, the following allegation was made against Christopher Raymond Phillips (the “Respondent”) by the Mutual Fund Dealers Association of Canada (“MFDA”):

Allegation #1: Commencing in August 2013, the Respondent has failed or refused to attend for an interview requested by MFDA Staff for the purpose of investigating the Respondent’s conduct, contrary to s. 22.1 of MFDA By-law No.1.

2. The Notice of Hearing provided for a First Appearance by teleconference before this Hearing Panel of the Atlantic Regional Council of the MFDA on November 19, 2014 at 10:00 am. By letter dated October 30, 2014, the Respondent did reply to the Notice of First Appearance. The Respondent, however, did not appear at the First Appearance nor did anyone appear on his behalf.

3. On December 4, 2014 the Respondent was personally served with a letter advising him of the date, time and location of the hearing on the merits of this matter. A copy of the Affidavit of Service of Mr. Frank Perry sworn December 5, 2014 attesting to the personal service of the letter on the Respondent was filed as an exhibit before the Panel.

4. On March 7, 2015 the Respondent was personally served with a second letter advising him of the date, time and location of the hearing on the merits of this matter. He was also served at that time with a copy of the affidavit of Daniela Capozzola, a senior investigator with the MFDA, sworn March 6, 2015, which Affidavit sets out the allegations made against the Respondent. The Affidavit of Mr. Frank Perry, sworn March 9, 2015, attesting to the personal service on the Respondent of the letter and of Ms. Capozzolo’s Affidavit was filed as an exhibit with the Panel.

5. Section 20.4 of MFDA By-law No.1 provides that if a Member or person summoned fails to attend at the hearing specified in the Notice of Hearing, notwithstanding that a reply may have been served, the Hearing Panel may proceed with the hearing without further notice to and in the absence of the Member or person summoned.

6. Similarly Rule 7.3 and Rule 13 of the MFDA *Rules of Procedure* provide that failure to attend the hearing on the date and time and location specified in the Notice of Hearing allows the Hearing Panel to proceed with the hearing without further notice to and in the absence of the Respondent. In addition, these Rules allow the Hearing Panel to accept the facts as alleged and the conclusions drawn by the Corporation in the Notice of Hearing as proven and to impose any of the penalties and costs set out in section 24.1 and 24.2 of MFDA By-law No.1.

7. The Panel is satisfied that the Respondent received appropriate notice of the hearing and of the allegations against him. The Respondent did not attend the hearing nor did anyone appear on his behalf. Accordingly the Panel agreed with Enforcement Counsel's request to proceed with the hearing of this matter.

8. At the hearing the Panel was referred to Ms. Capozzolo's affidavit, sworn March 6, 2015, which contains details of the matters investigated by the MFDA involving the Respondent, the particulars of which are set out below.

9. The Respondent was registered as a mutual fund salesperson (now a Dealing Representative) in New Brunswick with Investia Financial Services Inc. ("Investia") between September 12, 2011 and October 20, 2011 at which time he voluntarily resigned. Prior to Investia he was registered with Manulife Securities Investment Inc. ("Manulife") from July 2008 to July 2011 and before that with Berkshire Investment Group Inc. ("Berkshire") from September 2005 to July 2008.

10. On October 24, 2011 the MFDA received a Member Event Tracking System Report from Manulife indicating that the New Brunswick Securities Commission ("NBSC") was reviewing a complaint that it had received against the Respondent. The complaint alleged that the Respondent conducted personal financial dealings with a client. On November 17, 2011 the NBSC issued a cease trade order against the Respondent, his life partner WP, and various corporations including two in which the Respondent was a director, being 613247 N.B. Ltd.

("numbered company") and Centrum Home Mortgage Corporation ("Centrum") from trading in all securities.

11. The NBSC eventually discontinued its proceeding against the Respondent and the companies but continued with a proceeding against WP who was not registered in the securities industry. WP was eventually found to have solicited and obtained a total of \$858,782.82 from 11 investors based on promises to invest funds on their behalf which monies were never invested but were in fact used by WP to pay personal expenses. WP had provided the investors with forged Berkshire and Manulife collateral security documents.

12. WP was charged and pleaded guilty to nine counts of securities fraud. The agreed statement of facts before the New Brunswick Provincial Court on sentencing outlined the particulars of each complainant's losses which totaled \$594,997.82.

13. On September 28, 2012 WP was sentenced by the Court to three-years in jail on each count, to be served concurrently.

14. In the course of the investigation into the losses suffered by the investors at the hands of WP, Manulife provided MFDA Staff with documentation pertaining to Centrum that raised questions concerning the Respondent's activities with Centrum while he was employed with Manulife. Manulife did not approve, as required, any activities for the Respondent with respect to Centrum and the numbered company.

15. MFDA Staff also obtained documents from the NBSC which included loan documents that indicated that one of Manulife's clients had purported to enter into loans with the numbered company of which the Respondent was a director. As well, in WP's interview with NBSC Staff, WP stated that the Respondent was present at the meeting with SF, where, among other things it was discussed whether SF would be interested in an investment with a 12% return.

16. In January of 2013 Manulife provided the MFDA with its report into the investigation it conducted of the Respondents activities while employed with Manulife. Manulife reported that

two of the Respondent's clients confirmed that they dealt with WP with regards to their Manulife account. Manulife's attempts to obtain information regarding the Respondent's business relations with WP were not successful as the Respondent refused to accept delivery of the letter Manulife sent him.

17. On July 25, 2013 the MFDA sent the Respondent a letter by registered and regular mail advising him that the MFDA had commenced a review of his outside business activities while he was registered with Manulife and Investia.

18. As is detailed in Ms. Capozzolo's affidavit, between July 25, 2012 and September 11, 2013 Staff of the MFDA sent at least seven letters to the Respondent seeking his cooperation with its investigation.

19. On July 31, 2012 the Respondent provided a response to the questions asked by the MFDA Staff in its July 25, 2012 letter.

20. As part of its ongoing investigation, on February 11, 2013 the MFDA then wrote to the Respondent requesting that the Respondent attend for an interview with MFDA Staff. No response was received from the Respondent.

21. By letters dated March 11 and March 26, 2013 the MFDA again requested that the Respondent attend before its Staff for an interview. No response was received.

22. On August 26, 2013 the Respondent was personally served with a letter dated August 23, 2013 requesting that he attend for an interview with MFDA Staff. No response to the August 23, 2013 letter was received from the Respondent.

23. On September 11, 2013 MFDA Staff again wrote to the Respondent requesting that he attend an interview with MFDA Staff which letter was personally served on the Respondent. On September 17, 2013 the MFDA received a letter from the Respondent wherein he stated that he was "denying [Staff's] request for an interview".

24. In the Respondent's October 30, 2014 letter replying to the Notice of First Appearance, the Panel notes that the Respondent admits that he did not attend for an interview.

25. In our opinion Enforcement Counsel has established that the allegation did occur as set out in the evidence filed in this matter.

26. Enforcement counsel requested the following penalty be imposed against the Respondent:

- 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 pursuant to s. 24.1.1(e) of MFDA By-law No.1;
- b) a fine of \$50,000 to \$75,000 pursuant to s. 24.1.1 (b) of MFDA By-law No.1;and
- c) costs of \$7,500 pursuant to s. 24.2 of MFDA By-law No.1.

27. On numerous previous occasions, Hearing Panels have outlined the factors which should be considered when determining an appropriate penalty. In determining the appropriate penalties to impose, a hearing panel should consider:

- a) The protection of the investing public;
- b) The integrity of the securities market;
- c) Specific and general deterrence;
- d) The protection of the MFDA's membership;
- e) The protection of the integrity of the MFDA's enforcement processes.

*In the matter of Arnold Tonnie*s [2005] Hearing Panel of the Prairie Regional Council, MFDA file No.200503 dated June 27, 2005 at page 22.

28. The Panel in this matter has also considered the factors that many previous hearing panels have stated should be considered in determining whether a penalty is appropriate. These factors include the following:

- a) The seriousness of the allegations proven against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience and level of activity in the Capital Markets;
- d) Whether the Respondent recognizes the seriousness of the improper activity;
- e) The harm suffered by investors as a result of the Respondent's activity;
- f) The benefits received by the Respondent as a result of the improper activity;
- g) The risk to investors and the capital markets in the jurisdiction were the Respondent to continue to operate in the capital markets in the jurisdiction;
- h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) The need to deter not only those involved in the case being considered, but also any others participating in the capital markets engaged in a similar improper activity;
- j) The need to alert others to the consequences of inappropriate activity to those who are permitted to participate in the capital markets; and
- k) Previous decisions made in similar circumstances.

*In the matter of Robert Roy Parkinson (2005), 28OSCB 4324 (Ontario Regional Council) MFDA file No. 200501 at pages 14 and 15.
Tonnie, Supra at page 23*

29. We have also been guided by the MFDA Penalty Guidelines ("the Guidelines"), which state the following in the introduction:

Range is Guideline Only

The penalty types and ranges stated in the Guidelines are not mandatory. The Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are intended to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances but are not binding on a Hearing Panel but to provide a basis upon discretion can be exercised consistently and fairly.

30. The Guidelines recommend that consideration be given to the following penalties for Approved Persons in cases involving the misconduct alleged in the present case:

a) **Failure to cooperate:**

- Fine: Minimum of \$50,000.
- Termination of Member or permanent prohibition of Approved Person.
- Interim order pursuant to s. 24.3 of MFDA By-law No.1.

31. In considering the penalty requested, we have considered the primary objectives of the securities regulation, being: the protection of the investor, the integrity of the securities markets, specific and general deterrence, the protection of the MFDA's membership, and the protection of the MFDA's enforcement process.

32. The refusal of the Respondent to attend an interview with MFDA Staff, is in the Panel's opinion, a very serious matter. His action has prevented the MFDA from performing its regulatory functions and has undermined its ability to investigate matters to determine the full nature and extent of any misconduct. While we are unaware as to whether the Respondent recognizes the seriousness of his improper conduct as he subverted the ability of the MFDA to perform its functions, it goes without saying that refusing to attend an interview with MFDA Staff can undermine the integrity of the securities markets and must not be condoned.

33. In the Panel's opinion the penalty imposed must also deter not only the Respondent but other persons who may consider acting in a similar manner in not cooperating with an MFDA investigation. Our review of the guidelines leads us to conclude that the penalty proposed by Enforcement Counsel is clearly appropriate and within the range as established in earlier cases.

34. For these reasons, the Panel imposes the following penalty upon the Respondent:

- 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 pursuant to s. 24.1.1(e) of MFDA By-law No.1;
- b) a fine of \$75,000 pursuant to s. 24.1.1 (b) of MFDA By-law No.1; and
- c) costs of \$7,500 pursuant to s. 24.2 of MFDA By-law No.1.

DATED this 28th day of August, 2015.

“Edward W. Keyes”

Edward W. Keyes
Chair

“Ann C. Etter”

Ann C. Etter
Industry Representative

“Jason P. Downey”

Jason P. Downey
Industry Representative

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