



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: James Neeson

Heard: August 27, 2015 in Toronto, Ontario
Reasons for Decision: September 11, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Mark J. Sandler	Chair
Brigitte J. Geisler	Industry Representative
Guenther Kleberg	Industry Representative

Appearances:

Sarah Glickman)	For the Mutual Fund Dealers Association of
)	Canada
)	
)	
James Neeson)	The Respondent, self-represented, appearing by
)	teleconference

Introduction

1. By Notice of Hearing dated July 20, 2015, the Mutual Fund Dealers Association of Canada (“the MFDA”) commenced disciplinary proceedings against James Neeson (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Respondent and the MFDA agreed upon the relevant facts. The Respondent admitted that the facts disclosed that he had engaged in professional misconduct. The parties agreed that the appropriate penalty was a fine in the amount of \$10,000 and costs in the amount of \$2,500. The only point of disagreement related to the appropriate length of time that the Respondent should be given to pay the fine. It was agreed that costs were to be paid immediately.

3. After hearing the submissions of the parties, we found that the Respondent had indeed engaged in professional misconduct, as alleged, and we accepted the joint submission as to the amount of fine and costs to be paid. For the reasons that follow, we ordered that the Respondent pay the \$2,500 costs immediately and pay the \$10,000 fine in four equal installments over a 24 month period. We also placed certain qualifications on that payment schedule as set out below.

Agreed Facts

Registration History

4. The Respondent was registered in the mutual fund industry in 1990.

5. From January 30, 2004 to December 31, 2014, when the Respondent was terminated as a result of the misconduct described here, he was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investia Financial Services Inc. (“Investia”), a member of the MFDA.

6. The Respondent is not currently registered in the securities industry in any capacity. The Respondent states that until June 2015, he was employed, part-time, as a mortgage broker.

7. At all material times, the Respondent conducted business in the Elginburg, Ontario area.
8. The Respondent has not previously been the subject of disciplinary proceedings.

The Misconduct

9. At all material times, Investia's policies and procedures prohibited its Representatives, including the Respondent, from holding blank or partially complete pre-signed forms.
10. Between January 2010 and March 2014, the Respondent obtained, maintained, and in some instances, used to process trades, a total of 137 blank pre-signed forms in respect of 29 clients.
11. The blank pre-signed forms, of which 71 were used, included order instruction forms, New Account Application forms, and Know-Your-Client forms.
12. Investia's compliance staff detected the Respondent's misconduct during a compliance audit of his files on May 29, 2014. Investia immediately reviewed all client files maintained by the Respondent and sent letters to all of the clients he serviced to determine if he had engaged in any unauthorized trading in their accounts. No clients reported any concerns.
13. The Respondent states that all transactions in question were authorized by the clients, and that the pre-signed forms were used for client convenience.
14. On June 11, 2014, Investia placed the Respondent on close supervision. On September 23, 2014, Investia terminated the Respondent.
15. There is no evidence that the Respondent received any financial benefit from engaging in this misconduct beyond the commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

16. The Respondent cooperated with Investia's investigation into his conduct.

Analysis

17. The Respondent admits that between January 2010 and March 2014, he obtained, maintained, and in some instances, used to process trades, 137 blank pre-signed forms in respect of 29 clients contrary to MFDA Rule 2.1.1.

18. The parties agree that the appropriate penalty in the circumstances is a \$10,000 fine, together with \$2,500 in costs. As earlier indicated, they disagree as to the appropriate time frame within which the fine should be paid.

19. In our view, the proposed fine and costs are consistent with existing jurisprudence and the Penalty Guidelines. In light of the Respondent's personal circumstances, they represent significant sums of money. They adequately address specific and general deterrence, as well as protection of the investing public, the MFDA's membership, the integrity of the securities markets and the MFDA's enforcement processes. We are also mindful of the public interest in accepting negotiated joint submissions as to penalty unless the joint submissions fall outside of the range of reasonable outcomes. Here, the joint submission is appropriate and we accept it.

20. The Respondent requests that he be given 24 months to pay the fine. He is no longer employed in the securities industry. He was terminated as a result of his misconduct. He is now 67 years old. His financial savings are very limited. He expects little or no cash flow for a number of months due to medical issues, most particularly hip replacement surgery scheduled for September 14, 2015 with an extended convalescence to follow. He described in some detail the additional financial costs that he will incur during his convalescence period.

21. Enforcement counsel submitted that a period greater than 12 months to pay the fine would dilute its effectiveness. She contended that although a fine is not punitive, it should be somewhat onerous if it is to advance the principles of deterrence and confidence in the integrity

of the capital markets. She also argued that any period greater than 12 months would compel the MFDA to divert resources to administrative functions.

22. We acknowledge that 24 months to pay a fine of \$10,000 would often be regarded as excessive. However, each case turns on its own facts. Here, we are satisfied that the personal circumstances of the Respondent support a lengthier time for payment, subject to the qualifications set out in our Order. Those qualifications contribute to our conclusion that the penalty, including the time given for payment, addresses all of the applicable principles, including specific and general deterrence.

Order

23. For these reasons, we ordered that the Respondent pay a fine in the amount of \$10,000 pursuant to s. 24.1.1.(b) of MFDA By-law No. 1, payable in installments as follows:

- a) \$2,500 to be paid by February 27, 2016;
- b) \$2,500 to be paid by August 27, 2016;
- c) \$2,500 to be paid by February 27, 2017; and
- d) \$2,500 to be paid by August 27, 2017.

24. In the event that the Respondent is re-registered at any time before August 27, 2017, the Respondent shall pay the balance of the fine within seven days of the date of his re-registration pursuant to s. 24.1.1(f) of MFDA By-law No.1.

25. In the event the Respondent fails to pay the fine as set out in our Order, he shall immediately be suspended from conducting securities related business while in the employ of or associated with any MFDA Member until such time as the Respondent pays the balance of the fine, pursuant to s. 24.1.1(e) of MFDA By-law No.1.

26. The Respondent shall pay costs in the amount of \$2,500 immediately pursuant to s. 24.2 of MFDA By-law No. 1; and

27. The Respondent shall comply in future with MFDA Rule 2.1.1.

28. We are grateful to Ms. Glickman and Mr. Neeson for their assistance.

DATED this 11th day of September, 2015.

“Mark J. Sandler”

Mark J. Sandler
Chair

“Brigitte J. Geisler”

Brigitte J. Geisler
Industry Representative

“Guenther Kleberg”

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Industry Representative

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