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: Charles Albert Martin

Heard: October 12, 2016, in Toronto, Ontario
Reasons for Decision: November 11, 2016

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Mark J. Sandler	Chair
Gunther W.K. Kleberg	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Francis Roy	)	Counsel for the Mutual Fund Dealers Association of Canada
Charles Albert Martin	)	Not in attendance nor represented by counsel

Introduction

1. On March 21, 2016, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing in respect of a disciplinary proceeding commenced against Charles Albert Martin (the "Respondent"). It contained six allegations.

2. Staff ultimately proceeded against the Respondent respecting three of the original allegations:

> **Allegation #4:** Between February 6, 2013 and September 20, 2013, the Respondent disregarded directives from the Member to cease charging service fees or engaging in fee for service activities with clients outside the Member, and then misled the Member about accepting service fees and engaging in fee for service activities with clients, thereby interfering with the ability of the Member to supervise the Respondent and comply with its obligations under MFDA Rule 2.9 and MFDA Policy No. 4, contrary to MFDA Rules 1.1.2, 1.1.5, 2.10 and 2.1.1;
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> **Allegation #5:** On May 29, 2014, the Respondent misled Staff during the course of its investigation when he falsely stated during an interview with Staff that he had ceased charging service fees to clients in December 2012, contrary to section 22.1 of MFDA By-law No. 1; and
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> **Allegation #6:** Between 2004 and September 20, 2013, the Respondent solicited clients JM and DM to appoint a corporation that he controlled as a trustee in the clients' Will, and thereafter failed to renounce or disclose the appointment to the Member, thereby giving rise to a conflict or potential conflict of interest between the Respondent and clients JM and DM which he failed to address by the exercise of responsible business judgment influenced only by the best interests of clients JM and DM, contrary to MFDA Rules 2.3.1, 2.1.4 and 2.1.1.

3. On May 24, 2016, the Chair of this Hearing Panel ordered that Staff's attempts to serve the Notice of Hearing on the Respondent and otherwise inform him of these proceedings constituted valid service of the Notice of Hearing, pursuant to Rules 4.2(1) and 4.8 of the MFDA Rules of Procedure. Oral reasons were given for that decision. The Chair further ordered that the hearing on the merits take place on October 11-12, 2016. When it became clear that the hearing

would only take one day, the Hearing Panel agreed to proceed on October 12, 2016, the second scheduled date for hearing.

4. The Respondent did not attend the hearing. Enforcement Counsel relied upon the affidavit of Lucy Alfenore, a Senior Investigator with the MFDA, sworn on September 7, 2016 and the documents marked as exhibits to her affidavit. This was clear, cogent and convincing evidence that satisfied us, on a balance of probabilities, that the Respondent engaged in the professional misconduct contained in the three remaining allegations.

The Evidence Respecting Allegations #4 and #5

5. From November 2003 to September 2013, the Respondent was registered in Ontario and British Columbia as a mutual fund salesperson (now known as a dealing representative) with Investia Financial Services ("Investia"), a Member of the MFDA. At all material times, he conducted business from an Investia branch located in Kitchener, operating under the trade name, Martin Wealth Management Ltd. ("MWM").

6. In 1998, prior to becoming registered with Investia, the Respondent incorporated a company known as MWM Financial Counsel Inc. ("MWM FC"). He was its sole shareholder. MWM FC was apparently incorporated for the purpose of providing investment advice to clients, portfolio management services, insurance, tax and estate planning advice, and legal services.

7. The evidence disclosed that while the Respondent was registered with Investia, he continued to operate a fee for services business for Investia clients pursuant to which he solicited and accepted service fees from clients, directly or indirectly through MWM FC, totaling between 0.5% and 2.5% of the value of the clients' mutual fund accounts (the "Service Fees").

8. Commencing in November 2012, a number of clients made complaints against the Respondent, alleging, among other things, that he misrepresented the nature of his compensation to them and charged them excessive Service Fees. As a result of these complaints, Investia sent letters to the Respondent specifically instructing him to cease charging and accepting Service

Fees from clients and cease engaging in fee for service activities with clients, whether through MWM FC or other corporations he owned.

9. In response to Investia's specific instructions to cease charging and accepting Service Fees from clients, the Respondent stated to Investia that he had ceased doing so. He signed an acknowledgement and undertaking on February 6, 2013 confirming that he had ceased this activity and undertaking not to resume it. In an interview on May 29, 2014, the Respondent advised the MFDA that he had, either personally or through any corporation, ceased collecting Service Fees from Investia clients as of at least December 1, 2012 – that is, almost immediately after the complaints were made against him.

10. In fact, the Respondent did not cease charging and collecting Services Fees from Investia clients either in February 2013 or, as he stated to Staff, as of December 1, 2012. The documentary evidence is clear that he solicited and accepted payment of Service Fees from at least three clients between May 27, 2013 and August 6, 2013, and otherwise engaged in fees for services activities with at least four other clients on June 4, 2013, June 20, 2013 and August 28, 2013.

11. Based on this evidence, which we accept, the Respondent:

(a) disregarded directives from Investia to cease charging Service Fees to, or engaging in fee for service activities with, clients and then misled Investia about having engaged in such activities, thereby interfering with the Member's ability to supervise the Respondent and comply with its regulatory obligations; and

(b) misled Staff about the date on which he ceased engaging in fees for service activities and charging Service Fees, thereby interfering with, and complicating, Staff's ability to properly investigate the Respondent and the complaints made against him.

Evidence Respecting Allegation #6

12. In 2004, clients JM and DM named the Respondent's corporation, MWM FC, as a trustee in their wills. This was based on the Respondent's advice and recommendation and pursuant to the fee for services arrangement they had entered into with the Respondent. The Respondent, through MWM FC, remained a trustee for JM and DM's estates until January 2014 despite the following:

(a) a 2008 change to Investia's policies and procedures manual prohibiting its Approved Persons from accepting an appointment as "power of attorney… or other similar authorization" on behalf of clients on the basis that such appointments could create a conflict of interest between Approved Persons and clients; and

(b) a request from AM, the Respondent's daughter and one of his branch managers, to rescind and renounce MWM FC's appointment as a trustee of the clients' estates after she became aware of the appointment in 2011.

13. Despite the updates to Investia's policies and procedures manual in 2008 and AM's request in 2011, the Respondent did not renounce MWM FC's appointment or inform Investia of the appointment so that it could reassign the clients to another Approved Person.

14. Based on this evidence, which we accept, the Respondent was in a conflict or potential conflict of interest which he failed to address through the exercise of responsible business judgment influenced only by the best interests of his clients.

Penalty

15. The misconduct here was serious. The Respondent engaged in a pattern of misconduct. He deliberately misled the Member as well as his regulator. He continued to engage in prohibited conduct despite being instructed to stop, and despite signing an undertaking to stop. The effect of his misconduct was to prevent or make more difficult the ability of the Member to

supervise and monitor compliance. The effect of his misconduct was also to prevent or make more difficult the ability of the Respondent's regulator to perform its duties. Investors were placed at risk as a result.

16. The Respondent has no prior disciplinary record. However, we see nothing else that potentially mitigates the seriousness of his misconduct. He was an experienced registrant. His deceit in dealing with both the Member and his regulator was obviously motivated by self-interest. He has shown no remorse or acceptance of responsibility.

17. Any penalty imposed must meet the ends of specific and general deterrence, protect the investing public and MFDA's membership, the integrity of the securities market and the MFDA's enforcement processes.

18. In our view, only a permanent prohibition from conducting securities related business, together with a significant monetary penalty, can adequately protect the public from future risk, meets the ends of deterrence, and maintain confidence in the integrity of the industry and in its enforcement processes.

19. We have considered the penalties imposed in prior cases, as well as the MFDA Penalty Guidelines. In the circumstances, the appropriate disposition is as follows:

(a) The Respondent is permanently prohibited from conducting 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) The Respondent shall pay, no later than 6 months after the date of this order, a fine in the amount of $75,000, pursuant to s. 24.1.1(b) of MFDA By-law No.1; and

(c) The Respondent shall pay, no later than 6 months after the date of this order, costs of this proceeding in the amount of $7,500, pursuant to s. 24.1 of MFDA By-law No. 1.

20. We note that Enforcement Counsel only sought costs of $7,500 though these did not represent the full costs of the investigation and hearing.

21. We wish to thank Enforcement Counsel and the affiant for their careful presentations.

DATED this 11th day of November, 2016.

"Mark J. Sandler"

Mark J. Sandler
Chair

"Gunther W.K. Kleberg"

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Industry Representative

"Kenneth P. Mann"

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