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: Lachman Hassaram Balani

Heard: May 26, 2020 by electronic hearing in Toronto, Ontario
Decision (Penalty) and Reasons: June 16, 2020

# DECISION (PENALTY) AND REASONS

Hearing Panel of the Central Regional Council:

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| W. A. Derry Millar | Chair |
| Patrick Galarneau | Industry Representative |
| Rob Christianson | Industry Representative |

Appearances:

| | | |
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| Francis Roy | ) | Enforcement Counsel for the Mutual Fund Dealers Association of Canada |
| Lachman Balani | ) | Respondent, not in attendance or represented by counsel |

## I. INTRODUCTION

1. On December 10, 2019, the Hearing Panel found the Respondent had contravened the By-laws of the MFDA as follows for the reasons set out in our Reasons for Decision (Misconduct) dated February 10, 2020 ("Misconduct Decision"):

a) Commencing February 13, 2017, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-Law No. 1;

b) Between October 2010 and November 20, 2016, the Respondent prepared and submitted new account application forms and investment loan applications for at least two clients which the Respondent knew or ought to have known contained false, misleading or incorrect information, thereby failing to observe the 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;

c) Between October 2010 and November 20, 2016, 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 to at least two clients, thereby failing to ensure that the leveraged investment recommendations were suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1 and MFDA Policy No. 2; and

d) Between October 2010 and November 20, 2016, the Respondent failed to ensure that the leveraged investment recommendations he made to at least two clients were suitable for the clients and in keeping with the clients' investment objectives, having regard to the clients' relevant "Know Your Client" ("KYC") information and personal 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 and MFDA Policy No. 2.

2. On May 26, 2020, a penalty hearing was held to determine the appropriate penalty.

3. The MFDA issued a press release on April 14, 2020, announcing that the penalty hearing in this matter had been set for May 26, 2020. The MFDA sent a letter to the Respondent dated April 16, 2020, advising him that the penalty hearing had been set for May 26, 2020. The Respondent did not appear at the penalty hearing by telephone or video conference. The Respondent failed to respond to any communications from the MFDA. He failed to cooperate with the MFDA, he failed to respond to the Notice of Hearing, and he failed to attend the hearing on December 10, 2019.

4. The facts are set out in our Misconduct Decision. Our findings of misconduct arose from the breach by the Respondent of his Know-Your-Client ("KYC") and suitability obligations, his submission of new account application forms and investment loan applications for at least two clients which the Respondent knew or ought to have known contained false, misleading or incorrect information, and his failure to cooperate with Staff during the course of an investigation into his conduct.

## II. STAFF SUBMISSIONS

5. MFDA Staff ("Staff") submit that the appropriate penalty for the Respondent's misconduct 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, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
b) a fine of $100,000 to $125,000, 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.

6. Staff provided written Submissions with respect to penalty as part of the December 10, 2019, hearing and provided "Additional Submissions of Staff of the MFDA (Penalty)" for the hearing on May 26, 2020. Staff also provided a draft bill of costs in support of the request for costs fixed at $7,500.

7. Staff outlines in its written submissions the factors to be taken into account by Staff in recommending the penalty and which the hearing panel should consider in determining the appropriate penalty.

8. Staff submits that:

a) The nature of the misconduct is an aggravating factor in this case.

i. MFDA Hearing Panels have held that providing false information in NAAFs and loan applications is serious misconduct, which is inconsistent with the duties of registrants in the securities industry.[1]

ii. In addition, the KYC and suitability obligations are "essential" to protecting the public and any failure to comply with these obligations is "an extremely serious matter". The loans at issue were done well after the issuance of MSN-0069, and after the MFDA had prosecuted its 'first-generation' unsuitable leveraging cases.[2]

iii. What is more, the Respondent's failure to cooperate with Staff's investigation was a blatant rejection of the MFDA's jurisdiction and authority.[3]

iv. The failure of an Approved Person to comply with a request by an MFDA investigator made pursuant to s. 22.1 of MFDA By-Law No. 1 is serious misconduct. It subverts the ability of the MFDA to perform its regulatory function by fully investigating a matter and determining all of the facts and the full extent and implications of the underlying events. Further, the failure to provide information requested in an investigation undermines the integrity of the self-regulatory system and the effectiveness of its operations.

[1] *Lipski*, [2010] MFDA Hearing Panel Decision of the Pacific Regional Council, Hearing No. 201012, Decision dated November 3, 2010 at para. 19.
[2] *Daubney (Re)*, 2008 LNONOSC 338 (OSC) ("*Daubney*") at para. 15. *DeVuono (Re)*, [2012] MFDA Pacific Regional Council, File No. 201102, Hearing Panel Decision on Misconduct dated November 22, 2012 at para. 52.
[3] *Tahir (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201444, Hearing Panel Decision dated August 4, 2015 ("*Tahir*").

b) Benefits Received by the Respondent: The Respondent benefitted from this misconduct through the receipt of commissions and fees generated by the purchase of mutual funds with the monies borrowed by the clients.

c) Risk to Investors:

   i. By failing to respond to Staff's inquiries, the Respondent had demonstrated that he is not governable within the self-regulatory regime.

   ii. In addition, the Respondent's leveraging practices demonstrate that he ignored or had a total lack of understanding of his obligations as a registrant to ensure that his leveraging recommendations were suitable for clients.

   iii. Therefore, Staff believes that the Respondent would continue to pose a risk to investors were he permitted to remain in the mutual fund industry. A permanent prohibition is necessary to protect investors.

d) The Respondent's Past Conduct including Prior Sanctions: The Respondent has not previously been the subject of MFDA disciplinary proceedings.

e) The Respondent's Recognition of the Seriousness of his Misconduct: As the Respondent did not respond to the disciplinary proceeding, the Respondent either does not recognize the seriousness of his misconduct or is unwilling to take responsibility for it. This is an aggravating factor with respect to penalty.

f) Deterrence:

   i. Staff submits that the penalties requested are sufficient to deter not only the Respondent, but also any others who participate in the capital markets, from engaging in similar improper activity.

   ii. A permanent prohibition on the authority of an Approved Person to conduct securities related business with an MFDA Member is the most serious penalty available to the Hearing Panel.

   iii. In addition, a fine in the amount of $100,000 is significant and could not reasonably be viewed as a license fee or cost of doing business.

g) Previous Decisions Made in Similar Circumstances: The proposed penalties are consistent with previous decisions made in similar circumstances.

i. In *DeVuono (Re),*[4] which also concerned an Approved Person who misrepresented, or failed to adequately explain, the risks and benefits of a leverage investment strategy to an elderly couple with limited assets and income, and extremely limited investment knowledge. In addition to terms and conditions on the Approved Person's registration, the Hearing Panel imposed a 3 year suspension, a fine of $150,000 and costs of $20,000.

ii. In *Tahir (Re),*[5] which is most similar to this proceeding, the Hearing Panel imposed a permanent prohibition, a fine of $175,000 and costs of $10,000.

iii. In *Sarker (Re),*[6] among other things, the Respondent prepared and submitted loan applications and New Account Application Forms for two clients which the Respondent knew or ought to have known contained false, incorrect or misleading information.

iv. In almost all cases involving an Approved Person who failed to cooperate with Staff, MFDA Hearing Panels have imposed a permanent prohibition and a fine of at least $50,000.

9. In its Additional Written Submissions, Staff increases its recommended monetary penalty from $100,000 to a range of $100,000 to $125,000. Staff submits that:

a) The Hearing Panel also take into account that the Respondent in this case breached the client's trust in contravening his KYC obligations, and further abused the Member's and lending institution's trust by actively misleading them about the clients' true investor profiles. He did so by knowingly submitting to each party false documents in a manner that would prevent:

i. the clients from finding out that the recommended investment strategies were implemented using false information, and thus preventing the clients from questioning or determining the suitability of the Respondent's investment recommendations; and

[4] *DeVuono (Re),* 2013 LNCMFDA 34.
[5] *Tahir (Re),* [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201444.
[6] *Sarker (Re),* [2014] MFDA Central Regional Council, MFDA File No. 201327.

ii. the Member and the lending companies from making supervisory determinations based on true and accurate client KYC information.

b) This is an aggravating factor that justifies a significant penalty. Approved Persons carry on a business which is based upon the trust of clients and clients rely upon them to act in compliance with MFDA rules and regulations, including the KYC requirements and the obligation to ensure that investment recommendations are suitable. The penalties imposed for a registrant's failure to act honestly should reflect the gravity of the breaches and the importance of maintaining the trust of clients and the public generally in Approved Persons of the MFDA.[7]

10. Staff further submits that its request for costs of $7,500 based on the draft bill of costs provided to the Hearing Panel is reasonable and should be awarded against the Respondent.

## III. PENALTY

11. In exercising its discretion to impose a penalty, the Hearing Panel should take into account the following considerations:[8]

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; and
e) the protection of the integrity of the MFDA's enforcement process.

12. Hearing Panels when determining whether a penalty is appropriate often consider the following:[9]

a) the seriousness of the allegations proved 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;

[7] *Hill & Crawford Investment Management Group Ltd. and Albert Rodney Hill (Re)*, [2009] MFDA Central Regional Council, MFDA File No. 200834.
[8] *Tonnies (Re)*, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005, at para. 22.
[9] *Tonnies (Re)*, *supra*, at para 23.

d) whether the Respondent recognizes the seriousness of the improper activity;

e) the harm suffered by investors as a result of the Respondent's activities;

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 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 who participate in the capital markets, from engaging in similar improper activity;

j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

k) previous decisions made in similar circumstances.

13. In our view, the conduct of the Respondent as outlined in our Misconduct Decision and for which we made the findings of misconduct set out in paragraph 1 above is very serious conduct that requires a penalty commensurate with that severity.

14. We agree with the submissions of Staff as set out above with respect to the specific factors we should take into account in relation to the penalty in this case.

15. In our view, the appropriate monetary penalty is $125,000. The Respondent's complete failure to cooperate with Staff in its investigation of his conduct warrants the imposition of a fine of $50,000. The MFDA cannot carry out its function to protect the public if its Approved Persons fail to cooperate in investigations of the conduct. Such failure puts not only the public at risk but also impacts on the reputation of the industry and the Approved Person's dealer.

16. The Respondent completely failed his two clients in the manner in which he dealt with them. Not only did he fail to carry out his KYC and suitability obligations, he completely misled his clients by providing one set of NAAFS and loan applications to them which contained their correct information and a completely different and false set of NAAFS and loan applications to his dealer and the lender. The Respondent has demonstrated by this conduct that he is completely untrustworthy in an industry that requires a high level of trust.

17. In our view, the permanent prohibition for the conduct engaged in by the Respondent is appropriate as the public must be protected from Approved Persons who mislead not only their clients but also their dealers and lenders and who fail to cooperate with a MFDA investigation into the conduct.

18. The penalties determined by hearing panel must also serve as a deterrent to not only the Approved Person who has been found guilty of misconduct but to other Approved Persons in the mutual fund industry.

19. We appreciate that the Respondent has no discipline history with the MFDA; however, his conduct in this case is so egregious that it outweighs the fact that this is his first offense.

20. We reviewed the draft bill of costs submitted by Staff. The draft bill of costs is reasonable and supports an award of $7,500 for costs.

21. For the reasons submitted by Staff and set out above, we find the appropriate penalty 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, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
b) a fine of $125,000, 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 16th day of June, 2020.

"W. A. Derry Millar"
W. A. Derry Millar
Chair

"Patrick Galarneau"
Patrick Galarneau
Industry Representative

"Rob Christianson"
Rob Christianson
Industry Representative

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