



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: Edgar Mahilum

Heard: October 9, 2012 in Toronto, Ontario
Reasons for Decision: October 17, 2012

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Terrence Bourne	Industry Representative
Dena Norton	Industry Representative

Appearances:

Rohit Kumar)	Enforcement Counsel, Mutual Fund Dealers
)	Association of Canada (“MFDA”)
Edgar Mahilum)	Respondent did not appear and was not
)	represented by Counsel
)	

1. By Notice of Hearing dated the 22nd day of June 2012, a Hearing Panel of the Central Regional Council of the MFDA was convened to hear the merits of this matter. The Panel convened at 10:00 a.m. The Respondent did not appear. The Panel, out of an abundance of caution, delayed the commencement of the proceedings until 10:15 a.m. The hearing then proceeded in the absence of the Respondent. We were satisfied that the Respondent was well aware of the date for the hearing. He took part in the original telephone conference call on August 9, 2012. At that time the date for hearing was set on consent for October 9, 2012. In addition, on the date set for the hearing Enforcement Counsel received from the Respondent an email dated October 9, 2012 (Exhibit 5), which reads as follows:

Due to the fear for my safety at the public hearing this morning I will not be attending, secondly in reference to the allegations and the written submissions being presented I will accept the courts (sic) decisions and the penalties and fines imposed upon me.

2. In view of this email and the Respondent's involvement in the first appearance by telephone conference we are satisfied that the Respondent has received sufficient notice of the hearing. Therefore it was appropriate to proceed with the hearing pursuant to Rule 7.3 of the Rules of Procedure.

3. We then proceeded to hear the evidence from John Gallimore. He is the author of the affidavit (Exhibit 4) sworn October 1, 2012. There are numerous exhibits which outline the entire history of this case attached to the affidavit. Some of this evidence can be defined as hearsay, but pursuant to Rule 1.6(1) of the Rules of Procedure we are authorized to receive and accept this evidence.

4. The allegations against the Respondent are as follows:

Allegation #1: Between January 1, 2004 and December 31, 2008, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by recommending, selling or facilitating the sale of investments in the total amount of approximately \$375,000 to client PS and individuals BR and GB outside the Member, contrary to MFDA Rules

1.1.1(a) and 2.1.1.

Allegation #2: On or about September 5, 2008, the Respondent provided false and misleading information to the Member in response to the Member's inquiry regarding a client redemption, thereby failing to observe high standards of ethics and conduct in the transaction of business and be of such character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1.

Allegation #3: Commencing on or about October 19, 2011, the Respondent has failed to provide documents and information as requested by MFDA Staff during the course of an investigation, contrary to section 22 of MFDA By-law No. 1.

5. In response to the allegations, the Respondent filed a reply (Exhibit 3) dated August 8, 2012. In that reply the Respondent stated as follows:

1) Based on my stated and recorded deposition and testimony with both the MFDA Investigation officer at the MFDA office and the detectives at 22-Division based in Brampton Allegations #1 and #2 are all true and forthright (sic) BUT again because of the Blackmail and Physical Threat towards me and my family I carried through on my actions in order to protect myself and my family.

6. In that reply, the Respondent also indicates that he has made efforts to obtain material requested to answer Allegation #3, but has not been entirely successful. The evidence with reference to Allegation #3 indicates the Respondent did not make any real efforts to respond to the request of the MFDA. This conclusion is also confirmed in the facts and email from Scotiabank (Exhibits 6 and 7).

7. Upon consideration of the allegations, the affidavit of John Gallimore, the evidence of John Gallimore, the emails of August 8 and October 9, 2012, the submissions counsel for the MFDA, the provisions of the by-laws of the MFDA and the applicable legal principles we have concluded that the MFDA has proven on a balance of probabilities the allegations recited above.

8. We accept, apply and agree with the principle found in *Breckenridge (Re)*, 2007

LNCMFDA 38, (“*Breckenridge*”), which stated the following with respect to the nature and significance of the prohibition found in Allegation #1:

We agree with the submission of Enforcement Counsel that MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry. This Rule creates a regime where an Approved Person is only permitted to sell investment products that have been first approved for sale by the Member with which the Approved Person is registered and which are sold through the facilities of that Member.

Rule 1.1.1(a) is designed to protect both the Member and its clients. When a transaction is done off the books, the Member loses its ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor.

Breckenridge (Re), 2007 LNCMFDA 38, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007, at paras. 63-64.

9. We also accept, apply and agree with the principles and the authorities cited at paragraph 14 of Staff’s submissions. We also find that the Respondent has breached the standard of conduct as found in MFDA Rule 2.1.1. See *Breckenridge, (Re)(supra)*, at paragraphs 69 and 71. The Respondent admits his actions as set forth in paragraphs 21 and 27 to 30, inclusive, of Staff’s submission.

FACTS

10. Between October 30, 2006 and October 7, 2010, the Respondent was registered in Ontario as a mutual fund salesperson with Investors Group Financial Services Inc. On October 7, 2010 the Respondent was terminated by Investors Group. The Respondent had been previously registered in Ontario on the following dates:

- (a) between January 2006 and October 2006 as a mutual fund representative with BMO Nesbitt Burns Inc.;

- (b) between October 2003 and November 2005 as a mutual fund salesperson with BMO Investments Inc. (“BMOII”), a Member of the MFDA; and
- (c) between December 1995 and June 2003 as a mutual fund salesperson with another mutual fund dealer.

The respondent is not currently registered in the securities industry in any capacity.

11. In June 2010, during the course of an investigation conducted by the Ontario Securities Commission (“OSC”) concerning an alleged distribution of securities carried out by a company known as Hillcorp International Services, the Respondent was identified as a participant in the distribution of securities. The OSC referred his involvement to the MFDA. The MFDA did an investigation during which it was determined that the Respondent was aware of the nature and terms of the investments in Hillcorp. The Respondent had provided brochures to client PS and BR and GB which indicated that the funds solicited were to be used to invest in the purchases of shares of oil and real estate companies.

12. As alleged in the notice of hearing three individuals were involved. The individual known as BR invested \$100,000 in Hillcorp. The individual known as GB also invested \$100,000 in Hillcorp and the client PS invested \$185,000 in Hillcorp.

13. In July 2009 the OSC issued a temporary cease trade order against Hillcorp and its principals and another corporate respondent named Suncorp Holdings, which was an entity related to Hillcorp.

14. The two principals of Hillcorp entered pleas of guilty in the Ontario Court of Justice to one count each of breaching the cease trade order. As part of the sentence imposed on April 18, 2011, they were ordered to pay restitution totaling \$993,089.67. The parties mentioned earlier, GB, BR and client PS, were not parties to the restitution order.

15. Hillcorp was not an investment approved by Investors Group or BMOII for sale by its approved persons, including the Respondent. The transactions involving BR, GB and the client PS were not processed for the account or through the facilities of either Investors Group or BMOII. By facilitating the sale of investments of Hillcorp to clients BR, GB and client PS the

Respondent engaged in securities related business which was not carried on for the account and through the facilities of the Member between January 1, 2004 and December 31, 2008. These activities are all contrary to the MFDA Rules 1.1.1(a) and 2.1.1.

16. Investors Group made inquiries as to the deferred sales charges which appeared upon the redemption of certain securities controlled by the Respondent. The Respondent advised Investors Group that the funds were needed for other purposes rather than the investment in Hillcorp. This information given to the Member was false and misleading. The Respondent therefore breached the high standards of ethics and conduct in the transaction of the business contrary to the standards prescribed by MFDA Rule 2.1.1.

17. The Respondent was interviewed by MFDA Staff. He claimed he did not receive any fees or commissions for his role in the facilitating of sales of investments in Hillcorp. In an effort to determine the truthfulness of this response the Respondent was asked to provide copies of his bank statements. He undertook to do so. Notwithstanding efforts made by Staff they were unable to get that material, as is clear from paragraphs 57 and 58 of Mr. Gallimore's affidavit. Mr. Gallimore confirmed that of the four items requested only two were obtained from the Respondent. Those steps illustrate a clear breach of his obligation, contrary to s. 22.2 of the MFDA By-law No. 1.

PENALTY

18. As a Panel, we are obviously concerned with this type of conduct. In determining what the appropriate penalty should be we have considered a number of factors. These include the following:

- (a) the public interest and whether the penalty imposed will protect investors;
- (b) whether the penalty is reasonable and proportionate, having regard to the conduct of the Respondent as set out above;
- (c) whether the penalty addresses the issues of both specific and general deterrence;
- (d) whether the penalty will prevent the type of conduct which is set out above;
- (e) whether the penalty will foster confidence in the integrity of the Canadian capital markets;

- (f) whether the penalty will foster confidence in the integrity of the MFDA; and
- (g) whether the penalty will foster confidence in the regulatory process itself.

SUBMISSIONS AS TO PENALTY

19. Counsel for the MFDA submits that the following penalties should be imposed:

- (a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or in association with, any Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- (b) a global fine in the range of \$75,000 to \$125,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- (c) costs against the Respondent in the range of \$5,000 to \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

20. Counsel for the MFDA in careful and thoughtful submissions suggested a number of factors for the Panel to consider in addition to those factors found in paragraph 52 of Staff's submission. Those matters are as follows:

- (a) the Respondent's misconduct is serious: conducting off-book securities related business violated a prohibition designed to protect investors by ensuring proper oversight of trading activity;
- (b) the Respondent provided false and misleading information to the Member which concealed his off book activities;
- (c) his failure to produce documents as required by Staff frustrated Staff's proper investigation of his conduct; and
- (d) the Respondent knew that the \$385,000 Hillcorp Investment was not a genuine investment and has admitted the same to the investigator.

21. The Respondent recognized the seriousness of his misconduct. He has attempted to minimize this conduct by alleging that he was threatened to conduct this business because of threats to him and his family. There was no evidence of these threats called by the Respondent. This evidence was of little value. We find that this submission by the Respondent not only in his

interview and in the emails filed was simply an effort to avoid a more serious penalty. In addition he has failed to produce all the documents required by Staff in a timely manner.

22. There is no client complaint as to any losses. It appears that the income promised to investors was never paid and in addition BR, GB and client PS did not recover anything, as the restitution order by the OSC made in favour of many of the investors in Hillcorp and Suncorp did not include them.

23. We have considered the MFDA penalty guidelines which are not mandatory or binding but are simply a matter of guidance for the Panel. In addition, we have considered the penalties that have been posed in similar circumstances as found in the cases cited by Staff and found at paragraph 68 of Staff's submissions.

24. For all of these reasons, and considering the appropriate principles which we have discussed and reviewed, and notwithstanding the conduct of the Respondent, we have concluded that the appropriate penalty and costs will be as follows:

- (a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of, or in association with, any Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- (b) a global fine in the amount of \$125,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- (c) costs in the amount of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

25. We advised Enforcement Counsel upon the completion of the evidence and submissions that we would prepare reasons as to our findings in this matter. These are our reasons for making the findings that we did and for the penalties imposed upon the Respondent.

DATED this 17th day of October, 2012.

"John B. Webber"

The Hon. John B. Webber, Q.C.,
Chair

“Terrence Bourne”

Terrence Bourne,
Industry Representative

“Dena Norton”

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Industry Representative

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