



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: Arash Gabriel Armani

Heard: July 26, 2017 in Toronto, Ontario
Decision (Misconduct): July 26, 2017
Reasons for Decision (Misconduct and Penalty): August 3, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Cheryl A. Hamilton	Industry Representative
Selwyn B. Kossuth	Industry Representative

Appearances:

Paul Blasiak)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Arash Gabriel Armani)	Respondent, not in attendance or represented by
)	counsel
)	
)	

BACKGROUND

1. This is a Hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on July 26, 2017. Arash Gabriel Armani (the “Respondent”) was not in attendance or represented by counsel at the hearing.

2. From November 2013 to October 2014, the Respondent was registered in Ontario as a Dealing Representative (formerly known as a mutual fund salesperson) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA. At all material times, the Respondent conducted business in the Toronto, Ontario, area. On October 28, 2014, the Respondent resigned from Investors Group and is not currently registered in the securities industry.

3. A Notice of Hearing involving the Respondent was commenced by the MFDA on January 2, 2017. A first appearance by teleconference was set for March 15, 2017. The Respondent did not appear at that hearing in person or by counsel. A hearing date on the merits was set by the Chair of the Panel for July 26, 2017,

4. There was only one Allegation made against the Respondent in the Notice of Hearing. It was:

Allegation #1 Commencing January 2015, the Respondent has failed to cooperate with MFDA Staff during the course of an investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

5. As stated above, the Respondent did not appear at the present hearing. Nor did he file a Reply to the Notice of Hearing, as required under MFDA Rule 8 of the Rules of Procedure. In such a case, under Rule 8.4(1)(b), the Hearing Panel may “accept the facts alleged and conclusions drawn by the Corporation [i.e., the MFDA] in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2, respectively of MFDA By-law No. 1.”

Allegation #1 Proven

6. The charge of failing to cooperate was clearly proven by the MFDA through an affidavit, sworn on July 14, 2017, by Senior Investigator Ian Smith. There were many attempts to serve the Respondent with requests for information and with the Notice of Hearing – by process server, through registered mail, by regular mail, by email, and by telephone. At the March 15, 2017 Hearing, the Chair of the Panel found that, under the Rules, adequate notice of the Hearing had been given. Further attempts were made in June and July 2017. The Respondent has not communicated with Staff in any way since the commencement of this proceeding.

7. There is no doubt that the Respondent knew that an investigation was being undertaken by the MFDA. The Respondent called Staff on January 13, 2015 and had a conversation during which the Respondent advised Staff that he had retained legal counsel who would respond to Staff's letter the following week. But no response was received during that week, or thereafter.

8. The Respondent contravened section 22.1 of MFDA By-law No. 1. Section 21 states that the MFDA has a duty to conduct examinations and investigations of Approved Persons relating to compliance with By-laws, Rules and Policies of the MFDA. Section 22 states that an Approved Person has an obligation to submit to the MFDA reports, records, etc. and to attend and give information to the MFDA.

9. There are, of course, many cases that make it clear that an Approved Person must provide Staff with information and documentation when requested to do so. To hold otherwise would hinder the MFDA's ability to investigate the conduct of registrants in the mutual fund industry and prevent the MFDA from fulfilling its regulatory mandate to protect the public.

10. In the present case, the evidence establishes that the Respondent has failed to submit information and documents requested by Staff during the course of the investigation into his conduct and did not enter a Reply or participate in any way in the Hearing.

Conduct that was being investigated by the MFDA

11. During October and November 2014, four separate matters involving the Respondent came to the attention of Investors Group which caused concern to Investors Group and the MFDA. These are set out in some detail in the Notice of Hearing. At no time did the Respondent seek approval from Investors Group of these activities and no approval was given.

12. In brief, on October 27, 2014, MM came to the Respondent's branch office to speak to the Respondent. He informed the Regional Director that he was a client of the Respondent but not a client of Investors Group. MM declined to provide further information. When the Director met with the Respondent the next day to discuss the matter, the Respondent resigned from Investors Group during the meeting. As noted above, the Respondent did not seek or obtain approval from Investors Group to engage in outside business activities, or as it is also referred to and was used by counsel in this case, "dual occupations," outside of Investors Group. On November 3, 2014, Investors Group notified the MFDA that the Respondent had improperly engaged in outside business activities.

13. Later, in November 2014, BM contacted Investors Group and advised staff of Investors Group that he had paid \$10,600 in cash to the Respondent as a partial fee to obtain a mortgage on his behalf. The Respondent was not authorized to engage in mortgage transactions. This was reported to the MFDA. BM advised Investors Group that he was unable to locate the Respondent and that the Respondent had failed to process the requested mortgage and had not repaid BM.

14. In December 2014, Clients AZ and OF advised Investors Group that they had loaned monies to the Respondent for an investment and the Respondent had failed to pay them the interest that was due. This was reported to the MFDA by Investors Group. Approved Persons are normally not entitled to borrow from clients.

15. Finally, RJ, an Approved Person with Investors Group, advised Investors Group in March 2015 that in the summer of 2014, as stated in the Ian Smith's affidavit, "she had provided \$36,000 to the Respondent to invest on her behalf after the Respondent informed her that he

could generate investment returns of greater than 30% on the amount invested.” Her statement was passed on to the MFDA. RJ told Staff of the MFDA that at her request the Respondent had given her a cheque for \$36,000 that was returned as NSF.

16. These transactions are, of course, relevant to the penalty that is to be imposed by the Panel.

Penalty

17. Counsel for the MFDA proposed the following penalties against the Respondent:

- (a) a permanent prohibition on the Respondent’s authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and
- (b) a fine in the amount of at least \$50,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- (c) costs in the amount of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

18. A permanent prohibition is clearly required in this case. As counsel for the MFDA argued: “Due to the Respondent’s failure to cooperate with Staff’s investigation, the Respondent has demonstrated that he is ungovernable and would therefore pose a risk to investors and the capital markets were he to continue to operate in the capital markets.”

19. In all the cases cited to us by counsel, a permanent prohibition was ordered. See *Re McBurney* [2015] Decision No. 201522; *Re Theroux* [2014] Decision No. 201307; *Re Zhang* [2013] Decision No. 201309; and *Re Desbois* [2008] Decision No. 200822. These are cases where the only allegation was failure to cooperate.

20. It is also the penalty set out as the suggested minimum in the MFDA Penalty Guidelines.

21. An award of costs of \$7,500 is reasonable under the circumstances to recover a portion of the costs attributable to conducting the investigation and hearing of this matter. It is also consistent with the amounts awarded by the MFDA Hearing Panels in the decisions cited to us.

22. Determining what the monetary penalty should be is more difficult. Counsel for the MFDA was pressed by the Panel to state the precise penalty he was requesting. The proposed penalty in the written submission was “at least \$50,000.” Counsel replied that a fine between \$50,000 and \$75,000 would be appropriate.

23. We have stayed within that proposed range. It is consistent with the cases cited to us. Two of the cases had a penalty of \$50,000 and two a penalty of \$75,000.

24. It is our view that the underlying conduct in this case was potentially very serious. It involves a number of persons and in some of the incidents the sum that was involved was apparently not repaid. If the Respondent had cooperated, we would know more about the nature of the conduct. It is possible that we would have been able to conclude that the funds were misappropriated. As it is, we are only able to suspect this. Moreover, with cooperation, MFDA may have discovered more instances where the Respondent was involved in unauthorized outside activities.

25. Failure to cooperate in an investigation is always serious, particularly in a case such as this where the underlying conduct is potentially very serious. The MFDA Penalty Guidelines suggest a minimum fine of \$50,000. The conduct in the present case is not at the lower range of seriousness and so we impose a fine of \$75,000, the highest amount suggested by Counsel for MFDA.

Dated this 3rd day of August, 2017.

“Martin Friedland”

Martin L. Friedland, C.C, Q.C.
Chair

“Cheryl Hamilton”

Cheryl A. Hamilton
Industry Representative

“Selwyn B. Kossuth”

Selwyn B. Kossuth
Industry Representative

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