



Mutual Fund Dealers Association of Canada
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MFDA Bulletin

Enforcement

For Distribution to Relevant Parties Within your Firm

MFDA imposes lifetime ban and \$50,000 fine on Anthony McPhail

Nature of Proceeding A Hearing Panel of the Mutual Fund Dealers Association (“MFDA”) Ontario Regional Council has imposed disciplinary penalties on Anthony McPhail (“McPhail”) a former Approved Person of the MFDA.

By-Laws, Rules, Policies Violated Following a hearing on June 9, 2005, the Hearing Panel found that McPhail:

1. failed to produce for inspection and provide copies of documents requested by the MFDA for the purpose of an investigation of the Respondent’s conduct, contrary to s. 22.1(b) of MFDA By-law No. 1; and
2. failed to attend at the offices of the MFDA to give information respecting matters under investigation, contrary to s. 22.1(c) of MFDA By-law No. 1.

Sections 22.1(b) and (c) of MFDA By-law No. 1 state that:

For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

....

(b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated; and

(c) to attend and give information respecting any such matters;

....

and the Member or person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any Member or person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

Penalty

The Hearing Panel imposed the following penalties on McPhail:

1. Permanent prohibition on McPhail from engaging in any securities related business while in the employ of, or sponsored by, any MFDA member.
2. A fine in the amount of \$50,000;
3. Costs in the amount of \$10,000.00.

Summary of Facts

From October 1, 1996 to August 29, 2003, McPhail was registered as a Mutual Fund Salesperson with the Ontario Securities Commission. In October 2001, Cartier Partners Financial Services Inc. (“Cartier”) became the sponsoring dealer for McPhail and McPhail was approved as the branch manager of Cartier’s branch office in Chatham, Ontario. Cartier was acquired by Dundee Private Investors Inc. on June 1, 2004.

McPhail resigned from Cartier following the completion of an internal audit of the Chatham branch. The audit and a subsequent investigation by a forensic accounting firm revealed unusual transactions involving client funds that had been processed through the branch operating bank account.. As a result of these transactions, a significant amount of client funds could not be accounted for. McPhail was responsible for the administration of the branch operating account.

The MFDA commenced an investigation into McPhail's business conduct at Cartier after being informed of the conclusions reached by Cartier and the forensic accounting firm.

From February 18, 2004 until disciplinary proceedings were commenced by the MFDA in March 2005, MFDA investigators made repeated requests to McPhail for copies of bank statements and cleared cheques for any account in which McPhail held a direct or indirect interest or over which he had signing authority during the period September 1, 1998 to August 31, 2003. McPhail initially produced a small portion of the requested documents. He then promised on multiple occasions to produce the balance of the documents but never did so.

Between April 2004 and July 2004, MFDA investigators also made multiple requests to McPhail to schedule an examination at the offices of the MFDA. On July 15, 2004, McPhail agreed to attend an examination at the offices of the MFDA on August 24, 2004. On August 20, 2004, however, McPhail informed the MFDA that he would not be attending. McPhail failed to provide any reason for canceling the examination and subsequently ignored requests from MFDA investigators to reschedule the examination.

The Hearing Panel emphasized that in reaching its conclusion as to the appropriate penalties to impose on McPhail, it had not considered the circumstances giving rise to the requests for information made by the MFDA investigators. The Hearing Panel stated that McPhail was under a duty to comply with legitimate requests made by MFDA investigators by virtue of sections 22.1(b) and (c) of By-law No. 1 and that the penalties imposed on McPhail were for those violations and nothing else.

The Decision and Reasons have been posted on the MFDA website.