

In the Matter of
an Application for a Hearing and Review
of a Decision of the Prairie Regional Council
of the Mutual Fund Dealers Association of Canada
Pursuant to Section 21.7 of
The Securities Act, 1988, SS 1988-89, c S-42.2

- and -

In the Matter of
Discipline Proceedings Pursuant to Sections 20 and 24
of By-Law No. 1 of the Mutual Fund Dealers Association of Canada

Between

Staff of the Mutual Fund Dealers Association of Canada

- and -

Jack Louis Comeau

Shaunt Parthev, Q.C.

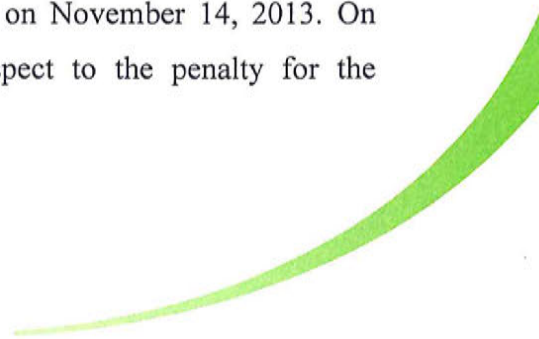
for Jack Louis Comeau

Charles A. Toth
Maria L. Abate

for Mutual Fund Dealers Association of Canada

Decision dated: June 16, 2015

[1] On July 30, 2013, a hearing panel of the Mutual Fund Dealers Association of Canada (“MFDA”) issued a decision with respect to the misconduct of Jack Comeau (“Comeau”). A hearing with respect to the penalty was held on November 14, 2013. On December 13, 2013, the panel issued its decision with respect to the penalty for the misconduct.



[2] On January 10, 2014, the MFDA gave notice of its intention to apply for a hearing to review that decision.

[3] On March 20, 2015, the date for scheduling the hearing, Comeau advanced a Notice of Motion which raised two issues for determination by this Commission panel. These issues are:

1. Does the MFDA have standing under s. 21.7 of *The Saskatchewan Securities Act, 1988* to apply to the Commission for a hearing and review of the penalty decision of the hearing panel of the MFDA?
2. If so, should the proceedings nevertheless be stayed on the account of the unacceptable delay and the resulting prejudice that the delay has caused to Mr. Comeau?

Analysis

[4] The panel heard presentations and received materials from both the MFDA and Comeau and has reviewed the numerous cited decisions filed and in particular considered the similar cases of *Global Securities Corp. v. British Columbia (Executive Director, Securities Commission)*, 2006 BCCA 404, [2006] 11 WWR 254, *Kasman (Re)* (2008), 31 OSCB 11605 and *Bahcheli v Alberta Securities Commission*, 2007 ABCA 166, [2007] 9 WWR 33.

[5] In *Global Securities Corp.*, the executive director launched an appeal for a hearing and the TSX Venture exchange joined as a party to the action. The *British Columbia Securities Act*, RSBC 1996, c 418, referred to in *Global Securities Corp.*, unlike the *Saskatchewan Securities Act*, specifically gives the right to the executive director to call for a hearing and review. The issue of whether the exchange had standing or had the ability to legally appeal its own decision, was not specifically addressed in this case.

[6] The *Bahcheli* decision of the Alberta Court of Appeal is of particular importance to the issues in this case. That Court concluded that the Investment Dealers Association of Canada (“IDA”) did not have the right of appeal from “either its own decision or a decision of its Council.” Subsection 73(1) of the Alberta *Securities Act*, RSA 2000, c S-4 is very similar to the legislation in Saskatchewan in wording and direction. The Court found that the IDA was not “directly affected” by the decision of its delegates. While *Bahcheli* was directly affected, the IDA was not similarly directly affected and therefore did not have the same standing.

[7] In *Kasman*, the IDA requested a hearing on a decision of one of its panels. A hearing panel of the Ontario Securities Commission ruled that the IDA **should** have the right to appeal for a hearing and review. As in *Global*, case, the Commission did not expressly deal with whether the legislation was such that they had the right to that hearing.

[8] As part of MFDA’s representations to the panel, MFDA requested this panel to consider s. 21.6 when making our decision as that section allows for rulings, hearings and reviews to be made “if they are in the public interest to do so.”

[9] It is this panel’s opinion that that section of the *Securities Act, 1988* grants powers to the Commission not to MFDA. In this application MFDA brought forth its request for relief under s. 21.7. It was not the Commission that was applying for the review. If the Commission felt that this penalty decision needed to be reviewed because it was in the public interest, it would have ordered a review of the decision when it was issued, which it did not do.

Decision

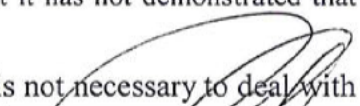
[10] The Saskatchewan *Securities Act, 1988*, does not specifically grant the MFDA a right of appeal from either its own decision or a decision of its Prairie Regional Council.

[11] Section 21.7(1) states that: "A person or company **directly affected** by a direction, decision, or order or ruling made pursuant to a bylaw, rule or other regulatory instrument or policy of a recognized entity or auditor oversight organization may apply to the Commission for a hearing and review of the matter." [Emphasis added]

[12] While the MFDA qualifies as a company under the Act, and may be indirectly affected by the decision, we the panel, remain unconvinced that they are directly affected by the decision of their MFDA Prairie Regional panel. Therefore, the MFDA does not have standing to apply for a review of the decision. In support of this position, the panel accepts and relies upon the reasoning in *Bahcheli* where the Court ruled:

Bahcheli is a person directly affected by the District Council's decision. At best, the IDA may disagree with the reasons or the result, and may have a concern for its precedent, but it has not demonstrated that it is directly affected....

[13] As a result of our decision, it is not necessary to deal with the second issue brought forth by the Notice of Motion.


Peter D. Carton
Panel Chair


Mary Ann McFadyen
Panel Member


Justice Eugene Scheibel
Panel Member