



Financial and  
Consumer  
Affairs Authority

**IN THE MATTER OF**  
***THE SECURITIES ACT, 1988, S.S. 1988, C.S-42.2***  
**AND**  
**IN THE MATTER OF**  
**JACK LOUIS COMEAU**  
(Referred to as the Respondent)

**DECISION**

**Hearing held:** June 17, 2014  
**Before:** Dean Murrison, Director, Securities Division  
**Appearances:** S. Parthev, Q.C. and K. A. MacDonald for the Respondents  
D.A. Smith for Staff, Securities Division  
**Date of decision:** August 25, 2017

**Introduction**

Staff of the Securities Division of the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) (Staff) applied under section 28(2) of *The Securities Act, 1988* (the Act) to the Director of the Securities Division of the FCAA (the Director) for terms and conditions to be placed on the exempt market dealer registration of the Respondent such terms and conditions being that the Respondent be prohibited from trading and advising in securities until June 11, 2015.

The Respondent was notified of this application and advised he had an opportunity to be heard under section 28(3) of the Act. The Respondent exercised this right with this Hearing.

## **Process Matters**

D. A. Smith represented Staff and S. Parthev, Q.C. and K. A. MacDonald represented the Respondent.

Staff did not call witnesses and relied solely on the Affidavit of Liz Kutarna dated April 8, 2014 which contained the merit decision of the Mutual Fund Dealers Association of Canada (MFDA) involving the Respondent dated July 30, 2013 (the Merit Decision) and the sanctions decision of the MFDA involving the Respondent dated December 11, 2013 (the Sanctions Decision). The Respondent did not raise any objection to this evidence and waived cross examination of Liz Kutarna on her affidavit.

The Respondent testified and called Kathleen Black, the Chief Compliance Officer (CCO) of Pinnacle Wealth Brokers Inc. (Pinnacle). Pinnacle is and was at the time of the hearing the sponsor of the Respondent. The Respondent entered exhibits R-1 to R-11 through testimony.

There were no preliminary matters dealt with.

## **The Law**

Sections 28 of the Act reads as follows:

28(1) On receiving an application for registration, reinstatement of registration or amendment of registration, the Director shall grant the registration, reinstatement or amendment unless it appears to the Director that:

- (a) an applicant is not suitable for registration, reinstatement of registration or amendment of registration; or
- (b) the proposed registration, reinstatement of registration or amendment of registration is objectionable.

(2) The Director may, at any time, restrict a registration by imposing terms and conditions on the registration and, without limiting the generality of the Director's powers, may do any of the following:

- (a) restrict the duration of the registration;
- (b) restrict the registration to trades in certain securities or exchange contracts or a certain class of securities or exchange contracts;
- (c) restrict the registration to providing advice with respect to the investing in or the buying or selling of certain securities or exchange contracts or a certain class of securities or exchange contracts.

(3) The Director shall not refuse to grant, reinstate or amend a registration or impose terms and conditions on it without giving the registrant or applicant an opportunity to be heard.

The Order of the FCAA as amended March 11, 2010 (the Delegation Order) found on the FCAA's website delegates among other things the power to suspend or terminate a registration under section 134 of the Act to the Director.

## **The Issue**

The Respondent is and was at the time of the hearing registered as an exempt market dealer sponsored by Pinnacle. His registration is and was at the time of the Hearing subject to supervision terms and conditions imposed at the time of the Respondent's transfer to Pinnacle because of the outstanding MFDA matter.

Should the Respondent's registration be further restricted in the manner requested by Staff? Is it in the public interest to impose these further restrictions? Are these restrictions required to ensure that the Respondent continues to be suitable for registration and that the registration does not become objectionable. Has the Respondent's proficiency, integrity and solvency changed such that these restrictions are needed. Are the restrictions necessary for specific or general deterrence?

### **The Facts**

The facts of this case are for the most part undisputed. They are mostly set out in the Merit Decision and the Sanctions Decision. I include here the facts I feel are most relevant to my decision.

The MFDA found in their Merit Decision:

- “(1) The Respondent breached MFDA Rule 1.1.1(a) by engaging in securities related business that was not carried on for the account and through the facilities of the Member.
- (2) The Respondent breached MFDA Rule 1.1.2 by engaging in off-book transactions and thereby interfering with the Member's ability to supervise the Respondent.
- (3) The Respondent breached MFDA Rule 2.1.1(c) in that he engaged in conduct unbecoming of an Approved Person by selling off-book products.
- (4) The Respondent breached MFDA Rule 2.1.1 in that he interfered with a reasonable supervisory investigation and made misleading and inaccurate statements thus he failed to observe high standards of ethics and conduct in the transaction of business.”

The MFDA ordered the following sanctions in their Sanctions Decision:

- “(1) The Respondent is prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 18 months.
- (2) A fine in the amount of \$100,000.
- (3) Costs in the amount of \$5000.
- (4) The completion of the Conduct and Practices Handbook Course before reinstatement as an Approved Person.”

At the time of writing all appeals of the MFDA decisions have been completed or withdrawn.

Given that there was no objection raised to the filing of these MFDA decisions as evidence and very little contrary evidence presented in testimony I accept the MFDA's findings of fact and their conclusions in their decisions.

I note that the Respondent has been in the business since 1990, which is some 27 years. I also note the evidence of the number of courses and education the Respondent has taken. I assume from this that Respondent would know and understand the obligations of a registrant, the requirements he was subject to and the reason for and the importance of these requirements to the effective functioning of the capital markets.

I also note the Respondent's testimony that he knew the requirements in question, ask about selling the investments in question, was denied permission by his firm at the time and then intentionally sold the

investments without telling his firm. It seems to be accepted he did this because he thought it was in the best interests of his clients, that is that the product was superior to a similar firm approved product. At the hearing no evidence as to loss by his clients from this action was presented.

I am of the opinion that this behavior by a registrant is absolutely unacceptable and does raise questions about the Respondent's ethics. We hold registered firms to high standards of supervision of their registrants and it is an integral part of the regulation of the capital markets. If registrants ignore their firm's directions the regulatory system breaks down. There is no way to see this as acceptable behavior for a registrant no matter the reason.

I also note the circumstances of the investigation and the Respondent's approach to the firm and MFDA investigation of this matter. They indicate to me the Respondent either kept poor records or that the Respondent did not fully cooperate with the investigation. Neither approach is acceptable for a registrant.

I do note that it appears the benefit to the Respondent was the same no matter which of the products he sold, the unapproved one or the similar product approved by the firm. The Respondent testified he did full know your client and suitability assessments for these investments. There is evidence suggesting the Respondent has paid back most of the commissions he made on these sales to his clients.

The evidence at the Hearing suggests that at the time of the hearing this was the Respondent's first disciplinary matter before the MFDA or the FCAA. I am cognizant that, if granted, the Staff's application would have the effect of removing at least part if not all of the Respondent's livelihood. The Respondent testified that the majority of his clients have stayed with him through this matter.

There was suggestion that this matter has cost the Respondent in the neighborhood of \$600,000. I also note that the Respondent was suspended by his then firm for 90 days prior the MFDA's decisions.

Kathleen Black, the CCO of Pinnacle, testified that the Respondent had been registered with Pinnacle for approximately two years at the time of the hearing and she had be carrying out the supervision under the current supervision terms and conditions on the Respondent's registration. She indicated there had not been in that time any issues with the Respondent's conduct. She was very supportive of the Respondent's registration.

### **The Decision**

First, I need to point out that this application is now moot given that the terms and conditions requested were supposed to end on June 11, 2015.

Second, the terms and conditions requested if applied would operate as a suspension and therefore would not be an appropriate term and condition. I have treated the application as an application for suspension. Both sides seemed to be impliedly addressing the suspension issue in their arguments.

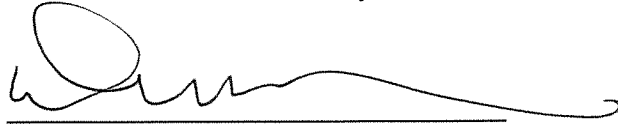
Third, but for the Delegation Order, I would not have jurisdiction under section 28 of the Act to consider a suspension application.

I agree with Staff that the actions of the Respondent do bring his integrity into question and raised the consideration of whether his registration is now not suitable and is objectionable.

Weighing the evidence I would find in favour of the Respondent in this case. I agree we are dealing with issues of specific and general deterrence. While the Respondent brought his problems on himself he has suffered substantial loses already as a result of this matter. Given that this matter is his first disciplinary matter before the MFDA and FCAA and the support of Pinnacle, I feel the current supervision terms and

conditions on his registration are and have been sufficient to achieve these purposes. I would continue these terms and conditions at the discretion of the Staff. I feel with these terms and conditions the Respondent's continued registration is suitable and not objectionable. I think it would be also prudent for Staff to conduct an audit of the securities business of the Respondent and those he is supervising, if any, to ensure he is living up to the standard he espoused he would in his testimony before me.

The application is dismissed.

A handwritten signature in black ink, appearing to read 'Dean Murrison', written over a horizontal line.

Dean Murrison  
Director  
Securities Division