



## BAD BEHAVIOUR

You do the crime, you pay the fine — and get banned from the industry. By *Ellen J. Bessner*

**When** faced with a charge from a regulator, advisors tend to be most concerned about the prospect of losing their licences. Although penalties really depend on the severity of the infraction, the IDA's disciplinary guidelines confirm that almost every infraction contemplates the possibility of a permanent ban or suspension. The MFDA does not have any disciplinary guidelines whatsoever. While consistency is lacking for imposed penalties, here's what you can expect.

If you are guilty of fraud against a client, a permanent ban is almost certain. Robin Anderson (MFDA case #200508) and Robert Hart (IDA Bulletin #3513) each misappropriated several hundreds of thousands of dollars from elderly, unsophisticated clients by forging signatures and depositing proceeds received into their personal accounts. The MFDA and IDA banned the respective advisors from the securities industry, and each advisor was fined significantly.

But fraud is not the only way to be banned from the industry. Failing to cooperate with regulators during their investigations can also result in a ban. Anthony McPhail, for example, (MFDA case #0152) was dismissed from the securities industry and fined \$60,000 for failing to attend his MFDA examination and refusing to produce documentation.

What about unsuitable transac-

tions, the more common regulatory infraction? The IDA guidelines recommend a minimum fine of \$10,000, a period of strict and/or close supervision, and a period of suspension in the most egregious cases involving deception and misrepresentation.

Consider the case of David Yanor (IDA Bulletin #3478). Yanor persuaded a 51-year-old single woman to open both cash and RRSP accounts. Yanor sold all mutual funds transferred into these accounts, attracting a DSC of \$4,611.

A few weeks later, the woman instructed Yanor to sell \$5,000 worth of her shares to pay off a personal debt. But Yanor advised her to open a margin account instead, borrowing the money from the dealer. Even after the \$5,000 was paid off, Yanor continued to purchase securities on margin. He also recommended the woman buy aggressive growth securities. The result: the client's account plummeted from \$100,000 to \$25,000.

The IDA fined Yanor \$30,000 and withdrew his right to seek re-approval as a registrant for one year. Additionally, the IDA placed him under a strict, 12-month supervisory period, while ordering that he re-write his CSI and CPH courses.

In another case, Janet Kim (IDA Bulletin #3520) received a six-month suspension, along with a host of other penalties, for making 22 discretionary

trades and promising to reimburse the client for any losses. At first, Kim delivered on her promise, depositing her own money into the client account to cover a margin call. But after not being able to extricate any more money from Kim, the client complained to the IDA.

Why did Kim receive a six-month suspension for infractions which seem more serious than Yanor's unsuitable recommendations? It may be because Kim negotiated her penalty with the IDA, while Yanor put the IDA to the trouble and expense of a three-day hearing. Most of the bulletins are pursuant to negotiated settlements as opposed to hearings. The regulators tend to impose a more severe penalty in a hearing than in a negotiated settlement.

It doesn't make much difference whether your licence is suspended for six months or indefinitely because your name will be tainted within a website bulletin for seven long years. It would be difficult to find a dealer to register you after any infraction that led to a suspension. **AE**

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