

COMMENT Advisor Law

Bend the rules, wreck your reputation

You could lose your licence if you defraud clients

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With hat in hand my clients — advisors — ask me: “Will I lose my licence for this infraction?” I wish I could answer with certainty, to provide some sense of relief, but I can’t. Why?

Neither the the Mutual Fund Dealers Association of Canada nor the insurance regulators have provided any framework for penalties to be imposed. While the Investment Dealers Association of Canada deserves credit for issuing discipline guidelines, (although not law, my experience is they apply it like law), attempting to introduce transparency and consistency, a review of the penalties imposed reveals quite the opposite. In fact, a review of these guidelines confirms that almost every infraction contemplates the possibility of a suspension or permanent ban.

That doesn’t deter me from trying to extricate some logic from the penalties imposed and publicized in the regulators’ Web sites so that advisors may glean at least some sense of what they can expect.

For example, it was found Robin Anderson in Edmonton and Robert Ernest Leo Hart in Toronto each misappropriated several hundreds of thousands of dollars from elderly, unsophisticated clients, (Anderson also defrauded his own wife) by forging signatures and depositing proceeds received into the advisors’ respective personal accounts, instead of investing for the clients.

It is not a surprise that both the IDA and MFDA responded by banning their respective registrants from the securities industry and, in addition, each was fined (whether such a fine can be collected is for another day). This is all to say: If you steal hundreds of thousands of dollars from clients, don’t expect to keep your licence.

But what if you steal much less than hundreds of thousands of dollars? In Vancouver, Raymond Brown-John “only” stole \$83,000 from two widows and borrowed \$67,000 from one of the widows. Adding insult to injury, he failed to fully co-operate with the MFDA investigation by failing to produce certain personal bank statements. He, too, was permanently banned from the securities industry and fined \$195,000.

Interestingly, in Toronto, Sean Shanahan, Stephan Katmarian and Nicole Brewster participated in trading schemes, benefiting one client to the detriment of others, yet different penalties were imposed: Shanahan was permanently banned from the industry, and fined \$482,353.58; Katmarian was banned for 15 years and fined \$408,875.27; and Brewster was banned for five years and fined \$46,468.80. Why do these penalties vary when they were each involved in the same infraction?

The hearing panel doesn’t offer a specific explanation, but my take is that Shanahan was more involved than Katmarian, and Brewster, being an assistant, was even less involved.

It may not make much difference whether your licence is suspended indefinitely or for several years because the bulletin remains on the Web site for seven years and it would be difficult, not to mention embarrassing, to find a dealer to register you after any infraction that led to a suspension.

This is not an exhaustive review of the matters in which the advisors were involved in frauds or schemes, but I think it is safe to say that if you are guilty of engaging in a fraud against a client you should expect a permanent ban or at the very least, a suspension.

What if the advisor doesn’t commit a fraud or scheme but fails or refuses to co-operate with the MFDA in its investigation? In Toronto last year, the hearing panel did not account for the transgressions that led to the investigation when it permanently banned Anthony McPhail from the securities industry and imposed a \$60,000 fine. He was penalized by virtue of his refusal to produce documentation and attend for his MFDA examination.

The clear message is that if you don’t co-operate with the investigation, you will lose your licence.

What about unauthorized or discretionary trading? In Calgary last year, Darrell Donald Osachuk lost his licence when clients complained he had engaged in trading without their instructions and then delivered false statements to hide the trades. I can understand how trying to hide a transgression attracts a permanent ban, as it is tantamount to fraud. But what if the advisor engaged in discretionary trading but not fraud/issuing false statements?

In Vancouver, in 2005, John Frederick Pryde was banned from the industry as a result of 414 discretionary trades in the accounts of 14 clients. OK, that’s a heck of a lot of discretionary trading!

In Oakville, Ont., in 2005, it was ruled Janet Beatrice Kim engaged in discretionary trading in a client account promising to reimburse the client for any losses. Twentytwo discretionary trades and US\$5,700 in losses later, Kim delivered on her promise, depositing her own money into the client account to cover a margin call. The client complained to the IDA, after not being able to extricate any more money from Kim, which led to a suspension for six months along with other penalties.

Even in matters concerning unsuitable transactions an advisor can be suspended. In Vancouver last year, David Patrick Joseph Yanor was suspended for 12 months after he recommended unsuitable investments and traded on margin for a client that was unsophisticated and had little appetite for risk.

So what does all of this mean? Advisors, be very careful. Know your obligations and follow the rules. It will protect your licence, your money and most importantly, your reputation.

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