

January 30, 2015

IN THE MATTER OF: THE REAL ESTATE BROKERS ACT

- and -

IN THE MATTER OF: ARSENIO FACUNDO SOBREVILLA

**REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION**

Panel:

Panel Chair:	Mr. J.W. Hedley
Member:	Mr. G.J. Lillies
Member:	Ms. S.C. Rolland

Appearances:

S. Gingera)	Counsel for Commission Staff
Arsenio Sobrevilla)	On his own behalf
R.E. Ritchie)	On behalf of Finalco Realty Canada Limited

Nature of application.

The application of Arsenio Sobrevilla for registration as a real estate salesman under the Real Estate Brokers Act (the "Act"), was rejected by the Registrar who administers the Act.

Mr. Sobrevilla brings this request for a hearing and review of the Registrar's decision pursuant to subsections 29(1) & (2) of The Securities Act:

29(1) Any person or company affected by a direction, decision, order or ruling of the Director given or made under this Act or any other Act of the Legislature may, by notice in writing sent by registered mail to the commission within thirty days after the mailing of the notice of the direction, decision, order or ruling, request and be entitled to a hearing and review thereof by the commission.

29(2) Upon a hearing and review, the commission may by order confirm, quash, or vary, the direction, decision, order or ruling under review, or make such other direction, decision, order or ruling as the commission deems proper.

By virtue of section 9 of the Act, the word "Director" as employed in section 29 of The Securities Act is deemed to mean "Registrar" in the context of the review requested by Mr. Sobrevilla. There is no dispute as to whether Mr. Sobrevilla has made his application to this panel on a timely basis or as to the Commission's jurisdiction to deal with his appeal as a hearing *de novo*.

The hearing.

This panel convened for a hearing on January 21, 2015. Although the January 21st hearing constituted a first appearance of the parties, Commission staff and Mr. Sobrevilla jointly requested that Mr. Sobrevilla's appeal be heard and determined on the same day. We proceeded accordingly to a hearing at which both documentary material and oral evidence were presented for our consideration.

Mr. Sobrevilla was unrepresented by legal counsel although he was accompanied by Richard Ritchie about whom there will be further references further in these Reasons.

Facts.

On June 2, 2014, Mr. Sobrevilla filed an application to the Commission for application for registration as a salesperson under The Real Estate Brokers Act.

Mr. Sobrevilla had been registered from April of 2012 as a salesperson under the Act. This is an application for reinstatement because he had allowed his registration to lapse in order to concentrate on commercial real estate courses and to study for a broker's license.

He has also been licensed as a life and general insurance agent for over ten years.

Prior to his registration as a real estate salesperson, Mr. Sobrevilla was licensed as a mutual fund salesperson. From October, 2005 to August, 2009, Mr. Sobrevilla had been registered with WFG Securities of Canada Inc. By Notice of Hearing dated July 22, 2013, the Mutual Fund Dealers Association of Canada ("MFDA") accused Mr. Sobrevilla of misconduct during that time as follows:

Allegation #1:

Between March, 2006 and February, 2008 the Respondent prepared and submitted new client account forms and loan applications for 14 clients which the Respondent knew or ought to have known contained false, incorrect or misleading information, thereby failing to observe high standards of ethics and conduct in the transaction of business and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #2:

Between March, 2006 and February, 2008, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, features and costs of a leveraged investment strategy that he recommended and implemented in the accounts of 14 clients, thereby failing to ensure that the leveraged investment strategy was suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #3:

Between March, 2006 and February, 2008, the Respondent failed to ensure that the leveraged investment strategy that he recommended and implemented in the accounts of 14 clients was suitable for the clients and in keeping with their investment objectives, having regard to the clients' relevant "Know Your Client" information and financial circumstances, including but not limited to the client's ability to afford the costs associated with the investment loans and withstand investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1.

Mr. Sobrevilla and the MFDA subscribed to an agreed Statement of Facts and Mr. Sobrevilla submitted to the imposition of a three year prohibition on his authority to conduct any securities-related business, together with a fine of \$20,000.00 and costs of \$5,000.00.

Mr. Sobrevilla accompanied his June 2nd application under the Act with a memorandum dated May 28, 2014, in which he explained to the Registrar some of the facts and circumstances which resulted in his disciplinary hearing with the MFDA. He supplemented that with a copy of the submissions of staff of the MFDA which clearly described the case for Mr. Sobrevilla's suspension by the MFDA and which listed the essential complaints about Mr. Sobrevilla, set forth as follows:

- a) Inflated assets in the clients' loan application;
- b) Incorrectly reported in the loan applications that the clients did not have any liabilities;
- c) Inflated the client's net worth in the new client account forms (using the inflated assets and understated liabilities described above);

- d) Reported that the clients had “good” investment knowledge in the new client account forms when the clients had limited to no investment knowledge.

On June 16, 2014, the Registrar informed Mr. Sobrevilla by letter that his application for registration as a real estate salesperson “in this initial instance” was being refused and cited the detailed information previously filed by Mr. Sobrevilla as giving the Registrar concerns about his trustworthiness, possible lack of “good conscience and moral fiber” and tendency to act in his, and not his clients better interests. In his letter, he offered Mr. Sobrevilla the opportunity to be fully heard by way of an interview with the Registrar.

Following the June 16th, 2014 letter, Mr. Sobrevilla met with the Registrar and another staff member on July 3^d, 2014. The panel was provided with the Registrar’s notes from the meeting which were taken by the staff member. Mr. Sobrevilla had also provided the Registrar with several documents detailing his relationship with World Financial Group, or WFG, providing fairly comprehensive detail and background information relative to his experiences as a mutual fund salesperson.

On July 10th, 2014, the Registrar wrote to Mr. Sobrevilla informing him that his application for registration was rejected, citing the following reasons:

1. You manipulated or falsified personal information about your client’s financial position in an effort to place them into an investment for which they would have never otherwise been qualified to obtain.
2. You compromised your client’s financial health by ignoring certain rules that you ought to have been cognizant of and in doing so failed to adhere to the proper industry standards of conduct.

The reasons for rejecting your registration are not limited to only those cited above. You should be aware that a number of the findings related to your having been suspended by the MFDA are very similar to the requirements that you would be expected to adhere to under The Real Estate Brokers Act, specifically those linked to protection for the public.

Mr. Sobrevilla informed the Registrar in early August that he wished to appeal the Registrar’s decision.

Arsenio Sobrevilla.

Mr. Sobrevilla has no discipline history as a real estate salesperson or as an insurance agent. Prior to his suspension in April of 2014, he had no disciplinary history with MFDA as a mutual fund salesperson. Staff counsel confirmed at our hearing that the Registrar’s refusal to accept Mr. Sobrevilla’s application as a real estate salesperson arises out of the MFDA’s disciplinary proceedings.

We know that Mr. Sobrevilla failed his clients as a mutual fund salesperson. He was guilty of overinflating their assets, under-reporting their liabilities and he falsely reported that his clients had “good” investment knowledge when they did not. He admits that his clients, who were friends of his and fellow church members, suffered financially as a result of taking part in Mr. Sobrevilla’s leveraged investment strategies and, of course, as a result of the widespread economic downturn in 2008.

Dennis Villarin.

In his defense, Mr. Sobrevilla says that his failings as a mutual funds salesman were not so much his fault as the result of his training and lack of supervision on the part of WFG. His mentor at all material times was one Dennis Villarin, another WFG salesperson. Mr. Sobrevilla points out that it was he who acted as one of the whistleblowers who reported Mr. Villarin to the Securities Commission.

It was Mr. Villarin who trained Mr. Sobrevilla in the practice of leveraging investments. Villarin was his “up line supervisor”. Villarin had actually sold Mr. Sobrevilla himself on leveraged investing in the first place, resulting in a loss by Mr. Sobrevilla of several thousands of dollars, most of which he has never recovered. But before the economic downturn occurred, he went on under Villarin’s mentorship to generate “a lot of leveraging business all of which were done identically and exactly according to Mr. Villarin’s leveraged investment strategy” (from Mr. Sobrevilla’s May 28th, 2014 memorandum). He says he did not even realize that his practices were in violation of MFDA rules until the branch manager at the time was terminated and replaced by someone who apparently had more knowledge of proper practices and methodologies.

We note here that Dennis Villarin was himself disciplined by the MFDA by a permanent prohibition, a \$250,000.00 fine and \$10,000.00 in costs.

The application.

Mr. Sobrevilla, now approaching his mid-60’s, wants the opportunity to continue his career as a real estate salesperson partly so as to recover his own losses at the hands of Villarin and of course to pay the fine imposed on him by the MFDA.

In this process, he is supported by the aforementioned Mr. Ritchie who, with full knowledge of Mr. Sobrevilla’s record as a suspended mutual fund salesperson and the facts giving rise to his suspension, is willing to take Mr. Sobrevilla on in the employ of his company, Finalco Realty Canada. Mr. Sobrevilla indicated to us that he is interested in moving into the area of commercial real estate sales and to this end has successfully completed courses in commercial real estate. Although he has previously been registered as a salesperson with Finalco Realty Canada, he has not gathered a great deal of experience in either residential or commercial sales.

Mr. Ritchie provided evidence to the panel. He is the authorized official of Finalco which is essentially a one man business operating out of Mr. Ritchie’s home. Finalco’s business is mainly that of a business broker – the buying and selling of private businesses. Often of course there is a real estate component to the assets of the business being bought and sold, hence the requirement that any Finalco agent be registered under the Act. Finalco does little, if any, business in residential real estate and the likely role for Mr. Sobrevilla would be for him to introduce commercial prospects to Finalco. Mr. Ritchie proposed in his evidence that he would train Mr. Sobrevilla in the “business of selling businesses” and acknowledged that Mr. Sobrevilla lacked the experience or knowledge to do very much on his own. He proposed strict supervision, that is taking him on calls and working with him to put proposals together.

It is Mr. Ritchie's opinion that Mr. Sobrevilla, with the benefit of hands-on training could handle the steep learning curve with which Mr. Sobrevilla would be faced as a Finalco representative.

The Registrar's position.

In his closing submission, staff counsel argues that Mr. Sobrevilla's failings as a mutual fund salesperson would clearly constitute failings in any capacity under the Act. More particularly, he refers to the MFDA rule which prescribes that its members shall:

- a) Deal fairly, honestly and in good faith with its clients;
- b) Observe high standards of ethics and conduct in the transaction of business;
- c) Not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
- d) Be of such character and business repute and have such experience and training as is consistent with "prescribed" standards.

He reminded the panel of Mr. Sobrevilla's apparent refusal to accept blame for his own misconduct.

Analysis and decision.

Mr. Sobrevilla's own oral testimony did little to dispel the impression that he blames his training and other people for his shortcomings, not himself. However, he did state that, once he had become better informed as to his obligations, he became so conservative in his approach to mutual fund sales that he was not doing any business. This was borne out by his dismissal from a mutual fund firm with which he was engaged after his resignation from WFG.

Frankly, this panel found it difficult to reach any conclusion regarding the moral aspects of Mr. Sobrevilla's relationship with his clients. Perhaps he was caught up in something which he couldn't fully appreciate and for which he did truly lack sufficient training and sophistication. We are not convinced that his record simply speaks for itself.

What is clear is that his misconduct did occur in the relatively distant past. Although he has been recently disciplined, the material period of time in which he breached the relevant standards of conduct were in the years 2006 and 2007.

Further, although we do not accept Mr. Sobrevilla's position that Mr. Villarin is to blame for losses suffered by Mr. Sobrevilla's clients, there is supporting evidence of the influence of Dennis Villarin over Mr. Sobrevilla. Villarin's conduct was met with a permanent suspension and \$250,000.00 fine, Sobrevilla's with a three year suspension and a \$20,000 fine. Mr. Sobrevilla's self portrayal as a victim is self-serving and falls short of a defence for his actions, but is still not a gross distortion of the facts as we have seen them.

Mr. Sobrevilla has appealed to this panel for the opportunity to earn a living. However, we agree with staff counsel's submission that it is the public interest, and not Mr. Sobrevilla's livelihood, upon which we must base our decision. In this case we have

decided that it is not contrary to the public interest to allow Mr. Mr. Sobrevilla to have his salesperson's registration reinstated.

Mr. Sobrevilla has passed the required examinations required to qualify himself for registration under the Act as a salesperson. If timing had been somewhat different, his three year suspension under the Securities Act would have run its course by the time of his application under the Real Estate Brokers Act. In theory, he would also now be eligible for registration as a mutual fund salesperson even though he has an MFDA discipline history.

We have taken into consideration the evidence surrounding the prevalence at the material times of leveraging investment strategies; we are cognizant of the training and supervision about which he has testified. However, our decision turns on the fact that he has been disciplined and that the discipline was for actions which occurred a number of years ago. Mr. Sobrevilla, despite his tendency to pass blame, admitted in his testimony that he fell short of the standards set for the securities industry and it appears to us that he appreciates that those standards apply to the real estate business as well. He has satisfied the panel that the MFDA disciplinary process has had its desired effect.

Accordingly, we have decided that the Commission's discretion in this instance will be exercised in Mr. Sobrevilla's favour.

Lastly, staff counsel submitted that Mr. Sobrevilla clearly and admittedly lacks any substantive experience in the business area practiced by his proposed employer, Finalco Realty Canada. He reminded us that, during the hearing, we were not provided with any realistic form of plan for the training and supervision of Mr. Sobrevilla. Mr. Ritchie did indicate that his practice has in the past been to meet with Mr. Sobrevilla "a couple of times a month", although he did testify that Mr. Sobrevilla's activities would be closely monitored and that he would be provided with training as required. In his testimony, Mr. Sobrevilla left no doubt that his business practices tend for better or worse to be shaped by directions given to him by his mentors. We are encouraged to note as a result of Mr. Ritchie's testimony that Mr. Sobrevilla would have the benefit of Mr. Ritchie's many years of experience in real estate and commercial sales. Mr. Ritchie acknowledged that Mr. Sobrevilla will require hands-on training and, in view of that as well of course as Mr. Sobrevilla's MFDA discipline history, we order that Mr. Sobrevilla's registration under the Act be conditional upon the Registrar's receiving, for two years following the date of registration, quarterly reports from his broker, in form and substance satisfactory to the Registrar, regarding ongoing supervisory activities in aid of Mr. Sobrevilla's training as a salesperson.

"J.W. Hedley"

J.W. Hedley
Hearing Chair

"G.J. Lillies"

G.J. Lillies
Member

"S.C. Rolland"

S.C. Rolland

Member