



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Jeffrey Hanford Harold Young

Heard: April 8, 2014, in Toronto, Ontario
Reasons for Decision: May 6, 2014

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Mark J. Sandler)	Chair
Cheryl Hamilton)	Industry Representative
Brian Nowak)	Industry Representative

Appearances:

Francis Roy)	Enforcement Counsel, Mutual Fund Dealers
)	Association of Canada
)	
Milena Protich)	Counsel for Jeffrey Hanford Harold Young
)	
)	

Introduction

1. Further to the Notice of Hearing issued on June 11, 2013, on April 4, 2014, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a news release providing notice of a settlement hearing in respect of Jeffrey Hanford Harold Young (the “Respondent”). In the circumstances and with the agreement of the parties, the Hearing Panel accepted that the requirements of section 24.4.3 of MFDA By-law No. 1 and Rule 15.2 of the MFDA Rules of Procedure with respect to notice of the settlement hearing had been met.

2. The Respondent entered into a Settlement Agreement with MFDA Staff (“Staff”), dated April 4, 2014, in which the Respondent agreed to a proposed settlement of matters for which he could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1.

3. On April 8, 2014, after hearing submissions from Staff and the Respondent, who was represented by counsel, we approved the Settlement Agreement, and signed an Order to that effect. These are our written reasons for doing so.

Agreed Facts

Registration History

4. From October 1998 to February 11, 2009, the Respondent was registered in Ontario as a mutual fund salesperson with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”), a Member of the MFDA. From October 25, 2004 to October 31, 2008, he was also registered with Sun Life as a branch manager.

5. As a result of the events described herein, the Respondent resigned from Sun Life on February 11, 2009. He is not currently registered in the securities industry in any capacity.

Universal Settlements International Inc.

6. From June 2006 to December 2008, the Respondent worked closely with Don Everett

Andrews (“Andrews”) while they were registered with Sun Life. The Respondent acted as Andrews’ branch manager and mentor. The Respondent and Andrews often shared joint advisor codes and responsibilities for servicing client accounts.

7. Commencing in or about 2000, the Respondent became aware of an Ontario corporation known as Universal Settlements International Inc. (“USI Corp.”). USI Corp.’s business involved finding individuals to invest in viatical settlements and American viators interested in selling their existing life insurance policies for an agreed upon lump sum. A viatical settlement is the sale of a life insurance policy by the policy owner to a third party for an amount greater than the current cash surrender value of the policy, but less than its net death benefit. The policy owner receives a lump sum cash settlement at the time of sale. The third party becomes the new owner of the policy, pays the annual premiums and is entitled to receive the net death benefit when the insured dies. In September 2006, the Ontario Securities Commission (the “OSC”) determined that viatical products offered by USI Corp. were investment contracts under s. 1(1) of the Ontario *Securities Act* and, therefore, securities.

8. In order to find interested investors, USI Corp. contracted with at least 1,200 independent contractors who agreed to sell, recommend, refer or facilitate the sale of its viatical settlements to individuals in return for a sales commission, referral fee or other form of compensation.

9. In or about 2000, the Respondent commenced selling, recommending, referring or facilitating the sale of USI Corp. viatical settlements to clients of Sun Life and other individuals.

10. Andrews became an independent contractor of USI Corp. in 2007 after being introduced to the company by the Respondent. Commencing in 2007, Andrews worked with the Respondent to sell, recommend, refer or facilitate the sale of USI Corp. viatical settlements to Sun Life clients and other individuals.

11. The Respondent worked with Andrews, either separately or jointly, and sold, recommended, referred or facilitated the sale of USI Corp. viatical settlements to at least eight Sun Life clients and 10 other individuals.

12. The total amount of the USI Corp. viatical settlements sold by the Respondent and Andrews is not known to Staff. The Respondent believes that he and Andrews sold, recommended, referred or facilitated the sale of at least \$880,000 USI Corp. viatical settlements between 2007 and 2008. The Respondent states he no longer has possession of, or access to, the records relating to their sales activity. Staff has been unable to obtain records of their sales activity through other means.

13. The Respondent admits that between 2007 and 2008, he and Andrews received referral fees or commissions from USI Corp. totaling \$26,400, which fees or commissions they shared equally (\$13,200 apiece). Commencing in the summer of 2007, these fees or commissions were paid to Andrews' company, High Velocity Performance and Sports Ltd. ("HVPS"). Andrews then provided the Respondent with his share of the fees or commissions by making a cheque payable to the Respondent's wife, VY, or daughter.

14. The Respondent admits that for the period between 2000 and 2007, prior to Andrews' involvement, he generated fees or commissions from USI Corp. in the amount of \$83,600, of which he was entitled to receive half (\$41,800). These fees were paid to him by USI Corp. via Kechnie Financial Group ("KFG") from 2000 to December 31, 2003 then via his company, Kechnie Health and Wealth Management Inc. ("KHWM"), from January 1, 2004 to 2006. Therefore, between 2000 and 2008, the Respondent received fees or commissions from USI Corp. in the total amount of \$55,000 (\$41,800 plus \$13,200).

15. Between 2007 and 2008, all sales of the USI Corp. viatical settlements to the Respondent's clients and other individuals were processed through HVPS as follows:

- a) The Respondent completed contracts or subscription agreements for the purchase of USI Corp. viatical settlements with the affected clients or individuals following which, either the Respondent or the clients or individuals would send the completed documents to Andrews;
- b) Andrews would, in the capacity of an advisor or representative with HVPS, sign the

- completed contracts or subscription agreements given to him;
- c) Andrews then received commissions or fees from USI Corp. that he deposited into HVPS's bank account; and
 - d) These commissions or fees were split equally between the Respondent and Andrews as follows:
 - i. 50% of the commission or fee remained in HVPS's bank account; and
 - ii. 50% was sent to the Respondent, but by way of cheques made payable to the Respondent's wife or daughter.

16. The viatical settlements offered by USI Corp. were not investment products approved by Sun Life for sale by its Approved Persons, including the Respondent and Andrews. The sales of the USI Corp. viatical settlements to Sun Life clients and other individuals were not carried on for the account or through the facilities of Sun Life.

17. On December 2, 2008, USI Corp. made an application to the Ontario Superior Court of Justice to commence proceedings pursuant to the Ontario *Companies' Creditors Arrangement Act* (the "CCAA Application"). As a result of the CCAA Application, the Court made an order granting USI Corp. protection from its creditors while it restructured its affairs. USI Corp.'s subsequent restructuring resulted in the nominal value of the USI Corp.'s viatical settlements, without any return on investment, being repaid in full to investors.

18. At no time did the Respondent or Andrews seek or obtain approval from Sun Life to commence or continue their involvement in USI Corp. or to sell, recommend, refer or facilitate the sale of the USI Corp. viatical settlements to clients of Sun Life or other individuals.

19. Sun Life did not have a referral arrangement with USI Corp. with respect to the sale or referral of its viatical settlements.

Aslan Holding Corporation

20. On August 13, 2008, the Respondent's wife, VY, and another individual, CT,

incorporated Aslan Holding Corporation (“AHC Corp.”) in Ontario. VY and CT became shareholders and directors of AHC Corp. CT’s husband, JT, became AHC Corp.’s President and C.E.O. At all material times, the Respondent and JT (and as of September 2008, Andrews) participated in, or actively advised on, AHC Corp.’s operations; they corresponded with AHC Corp.’s legal counsel, met and corresponded with third parties with whom AHC Corp. conducted, or intended to conduct, business, met with potential investors (including Sun Life clients for whom the Respondent was the servicing mutual fund salesperson) and regularly held, attended and participated at management meetings or other meetings where decisions about AHC Corp.’s affairs were discussed and made. In addition, the Respondent and JT (and as of September 2008, Andrews) regularly discussed AHC Corp.’s operations and exchanged emails, or otherwise held meetings, about the company.

21. The Respondent was not a director or an officer of AHC Corp. Rather, he assisted AHC Corp. as financial advisor or consultant, when requested by JT, CT or VY.

22. AHC Corp. was formed with the intention to borrow monies from investors at a fixed rate of return for the purposes of making investments in speculative ventures. In particular, AHC Corp. intended to offer to investors principal protected notes offering a return of at least 2% per month (the “AHC Investment”).

23. The speculative venture investments that AHC Corp. participated in included: (1) the purchase of promissory notes offered by Capital Interest LLC, a Nevada limited liability corporation; and (2) through Capital Interest LLC, the purchase of securities offered by a Nevada-based corporation known as Axxess Automation, LLC (“Axxess”). On May 9, 2009, the United States Securities and Exchange Commission obtained a court order halting the operations of Axxess, alleging that commencing in February 2006, the company operated a Ponzi scheme pursuant to which it raised \$14.1 million from investors by promising weekly returns of up to 5% from trading in futures.

24. In or about September 2008, Andrews became involved in AHC Corp.’s operations including, among other matters: (1) negotiations held between AHC Corp. and other companies

in which AHC Corp. sought to invest; and (2) the sale, referral or recommendation of the AHC Investment to Sun Life clients and other individuals.

25. Andrews was not a director or an officer for AHC Corp. Rather, he states that Andrews, like the Respondent, assisted AHC Corp. as financial advisor or consultant, when requested to do so by JT, CT or VY.

26. In or about November 2008, Andrews or Andrews' wife agreed to purchase US\$25,000 of the AHC Investment. The Respondent states that rather than make a payment in the amount of US\$25,000, Andrews or Andrews' wife tendered a payment of CAD\$25,000. Further, Andrews's desired investment could not be forwarded within the timelines required by AHC Corp. The Respondent therefore states that neither Andrews nor Andrews' wife ever purchased US\$25,000 of the AHC Investment.

27. Between September 2008 and early December 2008, the Respondent recommended, referred or facilitated the sale of the AHC Investment totaling at least \$700,000 to at least five clients of Sun Life.

28. For his efforts in recommending, referring or facilitating the sale of the AHC Investment to these five Sun Life clients, the Respondent received, or became entitled to receive, referral fees or commissions from AHC Corp. totaling at least \$57,000. The Respondent states that these referral fees or commissions totaling \$57,000 were paid by AHC Corp. to VY.

29. For his efforts in selling, recommending, referring or facilitating the sale of the AHC Investment to Sun Life clients, Andrews received referral fees or commissions from AHC Corp. totaling at least \$5,000. The \$5,000 fee was paid by AHC Corp. to Andrews's wife, KA, in her capacity as an employee of HVPS. The Respondent states that a short time after the \$5,000 fee was paid by AHC Corp. to Andrews' wife, Andrews repaid the full amount to AHC Corp. using a credit card cheque.

30. Primarily as a result of the United States Securities and Exchange Commission halting of

Access's operations, all individuals who purchased the AHC Investment, including the five clients of Sun Life, lost the totality of their investments.

31. The AHC Investment was not an investment product approved by Sun Life for sale by its Approved Persons, including the Respondent and Andrews. The sales of the AHC Investment to the Sun Life clients were not carried on for the account or through the facilities of Sun Life.

32. At no time did the Respondent or Andrews seek or obtain approval from Sun Life to commence or continue their involvement in AHC Corp. or to sell, recommend or facilitate the sale of the AHC Investment to clients of Sun Life or other individuals.

SPF Music Group Inc.

33. On August 3, 2006, the Respondent became a director of an Ontario corporation known as SPF Music Group Inc. ("SPF Corp."). SPF Corp. was incorporated by a long-time friend of the Respondent. SPF Corp. intended to operate in the music industry, acting as a record label, a publishing company and a production company for various artists.

34. In August 2007, the Respondent recommended, referred or facilitated the sale of SPF Corp. shares totaling \$10,000 to an individual known as SD.

35. In addition, in August 2007 the Respondent recommended SPF Corp. shares to at least two other individuals. They did not purchase SPF Corp. shares.

36. SPF Corp. shares were not an investment approved by Sun Life for sale by its Approved Persons, including the Respondent. The recommendation, referral or facilitation of the sale of SPF Corp. shares to SD by the Respondent was not carried on for the account or through the facilities of Sun Life.

37. At no time did the Respondent seek or obtain approval from Sun Life to commence or continue his involvement in SPF Corp. or to recommend, refer or facilitate the sale of the SPF

Corp. shares to clients of Sun Life or other individuals.

Sun Life's Policies and Procedures

38. At all material times, Sun Life's policies and procedures prohibited its Approved Persons from:

- a) recommending, selling or trading investment products that were not approved for sale by Sun Life;
- b) trading or advising in any securities outside the facilities of Sun Life;
- c) engaging in another gainful occupation that was not disclosed to and approved by Sun Life;
- d) serving as an officer, director or partner of third party organizations that were not disclosed to and approved by Sun Life; and
- e) entering into referral arrangements with third parties.

Referral Arrangement Entered Into By the Respondent

39. On January 1, 2007, the Respondent, through his company, Kechnie Young Financial Group Inc. ("KYFG"), entered into a referral arrangement with a corporation known as 9905009 Ontario Inc. ("9905009") whereby KYFG agreed to pay a referral fee of between \$300 and \$500 to 9905009 for every client referred to KYFG by 9905009 who became Sun Life mutual fund clients or purchased life insurance policies.

40. Between January 1, 2007 and July 2007, 9905009 referred at least seven individuals to KYFG who became Sun Life clients. Two of them also invested in the USI Corp. viatical settlements.

41. The Respondent states that he discussed with his Sun Life branch manager and compliance officer that he, or KYFG, was permitted to pay a referral fee to third parties. The Respondent states that on the basis of this conversation, he mistakenly understood that Sun Life was permitting him to enter into referral arrangements. The Respondent now admits that,

pursuant to Sun Life's policies and procedures, as well as MFDA Rule 2.4.2(b), he was required to obtain written approval from Sun Life for such referral arrangements and that his actions, as described herein, contravened those requirements. The Respondent further admits that the referral arrangement between KYFG and 9905009, even if properly disclosed to Sun Life, contravened the Member's policies and procedures and MFDA Rule 2.4.2(b), and therefore could not have been properly approved by Sun Life given that all referrals and associated fees must flow through the dealer and not individual Approved Persons.

The Respondent's Failure to Cooperate

42. On February 23, 2010, the Respondent attended an interview with Staff pursuant to section 22.1 of MFDA By-Law No. 1 with respect to, among other matters, his involvement with USI Corp., AHC Corp. and HVPS (the "Interview").

43. During the Interview, Staff asked the Respondent a number of questions that the Respondent refused to answer relating to his activities with USI Corp., AHC Corp. and HVPS, including the following, among others (the "Refused Questions"):

- 1) questions relating to a non-disclosure agreement entered into by the Respondent and USI Corp., among other parties;
- 2) questions relating to the number of clients or other individuals to whom the Respondent recommended, referred or facilitated the sale of the AHC Investment, including the identity of some of the clients' or other individuals' names and the amounts they invested in the AHC Investment, and commissions relating to each sale facilitated by the Respondent; and
- 3) questions relating to agreements entered into between the Respondent or other principals of AHC Corp. in relation to the affairs of AHC Corp.

44. Despite repeated requests sent by Staff to the Respondent that he provide responses to the Refused Questions, at no time has the Respondent answered them, in full or in part.

45. The Respondent declined to answer the questions on the advice of his counsel, on the basis that answering the questions may put him in a position of breaching confidentiality agreements the Respondent had executed with respect to information regarding USI Corp. and

AHC Corp. It is agreed that the Respondent was not entitled to decline to answer the MFDA's questions for this or any other reason.

46. Commencing February 26, 2010, Staff attempted to arrange for a follow-up interview with the Respondent and his counsel to discuss, among other matters, his involvement in, and activities relating to, SPF Corp. Due to ongoing health concerns requiring medical attention, and pursuant to the advice of doctors who felt that to do so would be detrimental to his health, the Respondent was not able to schedule any further interviews with Staff. The health issues that prevented the Respondent from scheduling further interviews with Staff continue to this day and his health is currently compromised and fragile.

47. Due to the Respondent's failure to answer the Refused Questions, Staff has been unable to fully determine, among other things:

- a) the true nature and extent of his activities in selling, recommending, referring and facilitating the sale of USI Corp. viatical settlements to Sun Life clients and other individuals; and
- b) the true nature and extent of his activities in recommending, referring and facilitating the sale of AHC Investments to Sun Life clients and other individuals.

The Respondent's Circumstances

48. The Respondent states (and it is uncontested) that he has paid a heavy price for his non-compliance with the regulatory requirements at issue in this matter, including the loss of his business and his personal reputation. He states that the events that led to his resignation from Sun Life on February 11, 2009, the ongoing investigation in this matter and the within proceeding have all had a devastating impact on his health and financial well-being. Indeed, the Respondent states that the loss of his business has contributed to struggles to support his family and a child having to leave school.

49. Though he states that he did not recognize the compliance issues raised by his conduct,

the Respondent nevertheless admits that, by virtue of his long-time involvement in the industry, including his registration as a branch manager, he ought to have known that his admitted-to conduct was in violation of the Member's policies and procedures and MFDA Rules, Policies and By-laws. He regrets his conduct and fully accepts responsibility for his actions, including the consequential penalties agreed to.

50. The Respondent does not wish, nor does he expect, to ever be registered in the securities industry again.

Analysis

51. The facts agreed upon, as set out in paras. 4 to 47, demonstrate that the Respondent engaged in the following misconduct:

- a) By selling, recommending, referring or facilitating the sale of:
 - i. USI Corp. viatical settlements to at least eight Sun Life clients and 10 other individuals between 2007 and 2008 via HVPS, USI Corp. viatical settlements between 2000 and 2004 via KFG, and USI Corp. viatical settlements between 2004 and 2006 via KHWM
 - ii. \$700,000 of the AHC Investments to at least five clients of Sun Life in 2008 and 2008; and
 - iii. at least \$10,000 of SPF Corp. shares to at least one individual in August 2007;

the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member, contrary to MFDA Rules 1.1.1(a) and 2.1.1;

- b) Between 2006 and 2008, the Respondent had and continued in other gainful occupations that were not disclosed to and approved by the Member by:

- i. recommending, referring or facilitating the sale of investments offered by USI Corp.; and
- ii. recommending, referring or facilitating the sale of investments offered by AHC Corp.;

contrary to MFDA Rules 1.2.1(d), as it then existed, and 2.1.1.

c) Between 2006 and 2008, the Respondent engaged in activities that gave rise to conflicts or potential conflicts of interest between his interests and the interests of clients of the Member, which conflicts he failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, by recommending, referring or facilitating the sale of investments in companies in which he had a direct or indirect interest, having regard to the sale of:

- i. \$700,000 of an exempt market investment product offered by AHC Corp. to at least five clients; and
- ii. \$10,000 of shares in SPF Corp. to one individual;

contrary to MFDA Rules 2.1.4 and 2.1.1

d) Between 2000 and 2008, the Respondent entered into a referral arrangement with:

- i. USI Corp. in respect of the sale of viatical settlements pursuant to which he was paid or entitled to receive referral fees or commissions totaling at least \$55,000; and
- ii. 9905009, pursuant to which the Respondent directly or indirectly paid, or was required to pay, fees in exchange for the referral of mutual fund clients and life insurance clients to KYFG;

contrary to MFDA Rules 2.4.2(b) and 2.1.1; and

- e) Commencing February 23, 2010, the Respondent failed to answer questions requested by the MFDA during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

52. The Settlement Agreement provided that the Respondent shall (a) pay a fine in the amount of \$7,500; (b) be permanently prohibited from acting as a mutual fund salesperson, commencing on the date of acceptance of the Settlement Agreement; and (c) pay the costs of this proceeding in the amount of \$5,000. As also agreed upon, the Respondent paid the fine and costs prior and subject to acceptance of the Settlement Agreement.

53. A hearing panel should not interfere lightly in a negotiated settlement. More specifically, it should not reject a Settlement Agreement unless it views the proposed disposition as clearly falling outside the range of reasonableness. We are satisfied that the Settlement Agreement here advances the public interest, and is reasonable and proportionate having regard to all of the circumstances.

54. In so concluding, we have considering the following factors:

- a) The contraventions are very serious. They exposed clients and others to significant risk of loss, particularly given the nature of the investments and the absence of Member due diligence and regulatory oversight of the investments. Because none of the sales were processed for the account or through the facilities of Sun Life, they were not subject to Sun Life's supervision respecting the suitability of the investments for the clients and whether the clients qualified as accredited investors who were eligible to purchase these investments;
- b) It was only fortuitous that none of the clients and other individuals who purchased the viatical investments offered by USI Corp. through the Respondent lost their investment. However, the clients and individuals who purchased the investment offered by AHC Corp. substantially lost the totality of their invested funds. The Respondent sold, recommended, referred or facilitated at least \$700,000 in such investments;

- c) The Respondent was an experienced registrant with a lengthy involvement in the industry, including his registration as a branch manager;
- d) His misconduct extended for a longer period of time and was cumulatively more substantial than that of Andrews. Unlike Andrews, he also failed to cooperate with his regulator, albeit based on legal advice. Moreover, he brought about Andrews' involvement in misconduct as a mentor and supervisor. These factors support a differentiation between the key component of the penalty imposed on Andrews (a three year prohibition) and the penalty imposed on the Respondent (a permanent prohibition).
- e) The Respondent has no prior disciplinary record;
- f) He has not been registered in the securities industry in any capacity since 2009;
- g) He has demonstrated remorse for his conduct and accepted full responsibility for his actions. This also obviated the need for a contested hearing;
- h) He provided full payment of the agreed to fine and costs in advance of the Settlement Hearing;
- i) He has paid a heavy financial and reputational price for his misconduct; and
- j) The events that led to his resignation from Sun Life, the ongoing investigation in this matter and this proceeding have had a devastating impact on his health and financial well-being. He advises that the loss of his business has contributed to struggles supporting his family and a child having to leave school.

55. We have considered the existing precedents on penalty, as well as the MFDA non-binding Penalty Guidelines. We are satisfied that the proposed penalty is reasonable and proportionate, addresses specific and general deterrence, and ultimately fosters public confidence in the integrity of the Canadian capital markets, and the industry. The fine imposed here is undoubtedly modest, by comparison to a number of fines in analogous situations. However, in our view, it appropriately recognizes the mitigating factors here, most particularly the Respondent's acknowledgement of responsibility, obviating the need for a contested hearing, and the devastating impact on his health and financial standing as a result of the events described above. These factors were evident to us from the Respondent's own closing comments, as well as the helpful submissions of his counsel.

Order

56. For these reasons, we have approved the Settlement Agreement and signed an Order to that effect.

57. We are grateful to both counsel for their assistance.

DATED this 6th day of May, 2014.

“Mark J. Sandler”

Mark J. Sandler
Chair

“Cheryl Hamilton”

Cheryl Hamilton
Industry Representative

“Brian Nowak”

Brian Nowak
Industry Representative

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