



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: Don Everett Andrews

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
)	
Don Everett Andrews)	In Person
)	
)	

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 Don Everett Andrews (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 MFDA Staff and the Respondent, who was self-represented, 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 June 2006 to December 31, 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. He is not currently registered in the securities industry in any capacity.

Universal Settlements International Inc.

5. At all material times while registered with Sun Life, the Respondent worked closely with Jeffrey Hanford Harold Young (“Young”), who was acting as the Respondent’s branch manager and mentor. Young and the Respondent often shared joint advisor codes and responsibilities for servicing client accounts.

6. Young became involved with 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.

7. 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.

8. Young became an independent contractor of USI Corp. prior to the Respondent’s involvement.

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

10. The viatical settlements offered by USI Corp. were not investment products approved by Sun Life for sale by its Approved Persons, including Young and the Respondent. 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.

11. Young and the Respondent 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 Respondent admits that he participated in the sale of USI Corp. viatical settlements in the following manner:

- a) Young completed contracts or subscription agreements for the purchase of USI Corp. viatical settlements with the affected clients or individuals following which, either Young or the clients or individuals would send the completed documents, along with a cheque payable to USI Corp., to the Respondent;
- b) The Respondent would sign the completed contracts or subscription agreements given to him;
- c) The Respondent forwarded the completed and fully executed contracts or subscription agreements, along with client funds, to USI Corp.;
- d) The Respondent then received fees or commissions from USI Corp. which he deposited into the bank account of a company he owned and controlled known as High Velocity Performance and Sports Ltd. (“HVPS”) (the “Commission Cheques”);
- e) These commissions or fees were split equally between the Respondent and Young as follows:
 - i. 50% of the commission or fee remained in HVPS’s bank account; and
 - ii. 50% was sent to Young, but by way of cheques made payable to Young’s wife or daughter.

13. The total amount of the USI Corp. viatical settlements sold by the Respondent and Young is not known to Staff. The Respondent believes that he and Young 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 given that he never kept copies of the relevant documents, but delivered them to Young and/or USI Corp. Staff has been unable to obtain records of their sales activity through other means.

14. The Respondent admits that between 2007 and 2008, he and Young received referral fees or commissions from USI Corp. totaling at least \$26,400, which they shared equally.

15. The Respondent had previously sought and obtained approval from Sun Life to operate HVPS, although not for the purposes described above. The Respondent had incorporated HVPS to provide personal training and coaching services.

16. 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.

17. At no time did Young and the Respondent 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.

18. 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

19. On August 13, 2008, Young'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.

20. As of September 2008, the Respondent, Young and JT participated in AHC Corp.'s operations as follows: they corresponded with AHC Corp.'s legal counsel and met and corresponded with third parties with whom AHC Corp. conducted, or intended to conduct, business; they met with potential investors (including Sun Life clients for whom Young and/or the Respondent were the servicing mutual fund salespersons) 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, Young and JT 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 Young, JT, VY (Young's wife) or CT.

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 guaranteed return of 2.5% per month (the "AHC Investment").

23. The speculative venture investments that AHC Corp. participated in included: (1) the purchase or viatical products offered by USI Corp. Settlements; (2) the purchase of shares in Capital Interest LLC, a Nevada limited liability corporation; and (3) 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, the Respondent 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. Between September 2008 and December 2008, Young and the Respondent sold, recommended, referred or facilitated the sale of the AHC Investment totaling at least \$700,000 to at least five clients of Sun Life.

26. For his efforts in selling, recommending, referring or facilitating the sale of the AHC

Investment to Sun Life clients, the Respondent received fees from AHC Corp. totaling \$5,000. The \$5,000 fee was paid by AHC Corp. to his 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 his wife, the Respondent repaid the full amount to AHC Corp. using a credit card cheque.

27. In or about November 2008, the Respondent sought to purchase \$25,000 of the AHC Investment. Nevertheless, the Respondent states that rather than make a payment in the amount of US\$25,000, he or his wife tendered a payment of CAD\$25,000. In any event, the payment was not made within the timelines required by AHC Corp. The Respondent states that neither he nor his wife ever purchased US\$25,000 of the AHC Investment.

28. In addition, in or about November 2008, the Respondent and his wife were presented with the option for his wife to purchase one third of the total outstanding shares in AHC Corp. from CT and VY. A share purchase agreement was prepared by counsel for AHC Corp., which, at the Respondent's request, was then sent to the Respondent's legal counsel.

29. In December 2008, the Respondent's lawyer counseled the Respondent and his wife not to purchase shares of AHC Corp. and further counseled the Respondent to cease any and all involvement in this venture. As such, on December 22, 2008, the Respondent sent an email to Young and JT informing them that, on the advice of his lawyer, his wife would not purchase AHC Corp. shares. On December 23, 2008, the Respondent sent another email to Young and JT stating as follows:

Please be advised that this is not a resignation. We will not be proceeding in any offering [AHC Corp.] has put forward.

All monies received from [AHC Corp.] in kind, will be paid directly back in full by year end. No offence intended.

30. After the United States Securities and Exchange Commission halted Axxcess'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. 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 Young or the Respondent 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.

The Respondent's Circumstances

33. Prior to June 2006, the Respondent had never worked in the securities industry. When he became registered with Sun Life, he states (and it is not disputed) that he came under the tutelage and supervision of Young. The Respondent states that, as their professional relationship grew, so too did their personal relationship; Young, who served as a minister at the church where the Respondent and his family attended, baptized the Respondent's son.

34. The Respondent states that, being new to the mutual fund industry and only having ever been supervised by Young, he fully trusted Young. The Respondent further states that his trust in Young also placed him in a difficult position when approached by Young to participate in AHC Corp.

35. On December 30, 2008, the Respondent met with a Sun Life branch manager, at which time he reported, for the first time, that he and Young had perhaps contravened Sun Life's policies and procedures as a result of their involvement in AHC Corp. and their sale of USI Corp. viatical settlements. During that December 30, 2008 meeting, the Respondent informed the same Sun Life branch manager that commissions earned by Young for the sale of USI Corp. viatical settlements had been processed through HVPS.

36. On January 12, 2009, the Respondent sent a letter to the same Sun Life branch manager reiterating the concerns he had reported on December 30, 2008.

37. Between January 2009 and February 2010, during Sun Life's and the MFDA's subsequent investigation into Young's and the Respondent's activities, the Respondent admitted to having participated in the sale of USI Corp. viatical settlements. The Respondent further informed Sun Life that Young had approached some clients for whom Young and the Respondent shared joint advisor codes for the purpose of soliciting their purchase of the AHC Investment. He also informed Sun Life and the MFDA that AHC Corp. had approached the Respondent's wife to purchase one third of AHC Corp.'s shares, but that such offer was declined on the advice of the Respondent's counsel. Finally, he provided documentary evidence to Sun Life and the MFDA, including email correspondence, outlining his and Young's role in AHC Corp.

38. On December 9, 2009, counsel for the Respondent sent a letter to the Ontario Securities Commission and the Financial Services Commission of Ontario outlining the Respondent's conduct, as described above. The Respondent states that he then fully cooperated with Staff during its investigation into this matter.

39. On December 31, 2009, the Respondent resigned from Sun Life. He has not been registered in the securities industry in any capacity since that time.

Analysis

40. The facts agreed upon, as set out in paras. 4 to 32, demonstrate that between 2007 and 2008, the Respondent engaged in the following misconduct:

- a) By selling, referring or facilitating the sale of USI Corp. viatical settlements to at least eight Sun Life clients and 10 other individuals in a total amount of \$880,000, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of Sun Life, contrary to MFDA Rules 1.1.1(a) and 2.1.1;
- b) By selling, referring or facilitating the sale of USI Corp. viatical settlements to Sun Life clients and other individuals, and by participating in the operation of AHC Corp.,

the Respondent had, and continued in, another gainful occupation which was not disclosed to and approved by Sun Life, contrary to MFDA Rules 1.2.1(d), as it then existed, and 2.1.1; and

- c) He entered into a referral arrangement with USI Corp. in respect of the sale of viatical settlements pursuant to which, along with Young, he was paid or entitled to receive referral fees or commissions totaling at least \$13,200, contrary to MFDA Rules 2.4.2(b) and 2.1.1.

41. The Settlement Agreement provided that the Respondent shall (a) pay a fine in the amount of \$5,000; (b) be prohibited from acting as a mutual fund salesperson for a period of three years, commencing on the date of acceptance of the Settlement Agreement; (c) pay the costs of this proceeding in the amount of \$5,000; and (d) prior to becoming re-registered as a mutual fund salesperson with a Member of the MFDA, complete an industry course acceptable to Staff of the MFDA. As also agreed upon, the Respondent paid the fine and costs prior and subject to acceptance of the Settlement Agreement.

42. 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.

43. 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 and Young 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 and Young sold, recommended, referred or facilitated at least \$700,000 in such investments;
- c) At the outset of the misconduct, the Respondent was new to the industry, and came under the influence of Young;
- d) In December 2008, the Respondent reported his and Young's involvement in AHC Corp. and their sale of viatical settlements to Sun Life. He also advised Sun Life that commissions earned by Young respecting the viatical settlements had been processed through his company, HVPS. He followed this up with a letter to Sun Life reiterating the concerns he had earlier reported.
- e) The Respondent cooperated fully with the subsequent investigations by Sun Life and MFDA into Young's activities and his own activities. His counsel also sent a letter to the OSC and the Financial Services Commission of Ontario outlining the Respondent's conduct;
- f) He has no prior disciplinary record;
- g) He has not been registered in the securities industry in any capacity since December 31, 2009;
- h) He has demonstrated remorse for his conduct and accepted full responsibility for his actions;
- i) He provided full payment of the agreed to fine and costs in advance of the Settlement Hearing; and
- j) He has paid a heavy financial and reputational price for his misconduct.

44. 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. It also appropriately recognizes the important mitigating factors here, most particularly the Respondent's role in bringing the

misconduct to the attention of the authorities before any investigation or complaint had been initiated against him or Young.

Order

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

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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