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: Michel Claude Bédard

Heard: December 17, 2019 in Toronto, Ontario
Decision: December 17, 2019
Reasons for Decision: January 20, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Michael Coulter	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
	)	
	)	
	)	
Michel Claude Bédard	)	Respondent, in person
	)	
	)	

Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on Tuesday, December 17, 2019. The full Settlement Agreement, dated December 17, 2019, entered into between Staff of the MFDA and Michel Claude Bédard ("Mr. Bédard" or the "Respondent") is available on the MFDA website. Mr. Bédard was not represented by counsel and appeared in person.

2. The proceedings were commenced by a Notice of Hearing dated April 16, 2019.

3. Since September 2007, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative).

4. From April 19, 2013 to May 10, 2016, the Respondent was registered in Ontario as a dealing representative with Desjardins Financial Security Investments Inc. ("DFSI"), a Member of the MFDA and since June 7, 2016, the Respondent has been registered in Ontario as a dealing representative with De Thomas Wealth Management Corp. ("De Thomas"), where he continues to be registered. At all material times, the Respondent conducted business in the Hamilton, Ontario area.

5. The Panel accepted the proposed Settlement Agreement at the conclusion of the December 17, 2019 hearing, with reasons to follow. These are our reasons for the decision.

Contraventions

6. The Respondent admits in paragraph 25 of the Settlement Agreement that "between January 2016 and March 2016, he engaged in securities related business that was not carried on for the account of the Member or through the facilities of the Member by recommending and selling a $100,000 investment in a syndicated mortgage to one client, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1."

The Misconduct

7. The details of the misconduct are set out in paragraphs 10 to 19 of the Settlement Agreement and will not be described in detail here.

8. In brief, in late 2015, the Respondent met with the managing partner of a mortgage broker and real estate financing and investment company, Core Advisory ("Core"), and was informed about an opportunity to offer clients investments in syndicated mortgages as an agent for Core. The Respondent introduced two clients to Core and recommended they consider investing. On or about March 8, 2016, the Respondent recommended and sold a $100,000 investment in a syndicated mortgage through Core to one of the clients, client CA, and provided the necessary documents for the client's signature to complete the investment. The Respondent received a 5% commission, totaling $5,000, as a result of this investment.

9. The transaction was not done for the account of DFSI or through the facilities of DFSI and the Respondent did not disclose his activities pertaining to Core to DFSI. At all material times, DFSI's policies and procedures required such disclosure and permission and required Approved Persons to conduct all securities related business through DFSI.

10. On or around October 31, 2016, Client CA's investment in the Core syndicated mortgages was frozen and distributions payable to client CA were discontinued. Client CA eventually received about $7,000 from his $100,000 investment.

Terms of Settlement

11. The Respondent agreed to the following Terms of Settlement (see paragraph 26):

a) the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 1 year from the date the Settlement Agreement is accepted, pursuant to section 24.1.1(c) of MFDA By-law No. 1;

b) the Respondent shall pay a fine in the amount of $10,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

c) the Respondent shall pay costs in the amount of $2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1;

d) the Respondent shall in the future comply with MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1; and

e) the Respondent will attend in person, on the date set for the Settlement Hearing.

Acceptance of Settlement Agreement

15. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

The conduct in the present case is serious. Syndicated mortgages are securities. See MFDA Bulletin #0583-P (Nov. 12, 2013) and *Re Cheung* 2019 LNCMFDA 17 at paragraph 17. Engaging in securities related business outside the Member undermines the regulatory regime, exposes clients to potential harm, and can bring the mutual fund industry into disrepute. The seriousness of such misconduct was well expressed by the Hearing Panel in *Re Qi* 2013 LNCMFDA 87 at paragraph 11:

> "Conducting securities related business or outside business activity without the approval or knowledge of the Member is serious misconduct. The Member loses its ability to supervise the transactions and to assess the suitability of the transactions for the investors. The misconduct can have dire consequences for the investors involved as the off-book investments may not be suitable for the investors or even legitimate investments. The misconduct may bring the Member or the mutual fund industry into disrepute."

16. There are, however, mitigating factors in the present case. Only one client was involved and that client did not complain to the MFDA. Moreover, the Respondent has not previously been the subject of a MFDA disciplinary proceeding.

17. The monetary penalty of $10,000 is double the amount the Respondent received from the transaction, so he has not profited by the transaction. The MFDA examined the Respondent's ability to pay a fine and is satisfied that his claim of inability to pay is genuine and should be taken into account in determining the monetary penalty. Paragraph 22 of the Settlement Agreement states: "The Respondent acknowledges that absent his inability to pay, it would have been appropriate for him to be subject to a sanction that included a greater financial penalty due to the seriousness of the misconduct that is the subject of the Settlement Agreement."

18. Paragraph 23 of the Settlement Agreement also notes: "At the time of the sale of the syndicated mortgage, the Respondent intended to transition his registration to De Thomas, where he reasonably believed he would be permitted to sell syndicated mortgages." So there is not the wilful disregard of the rules that one sees in many other cases.

19. Prohibition of employment with an MFDA member for a year is not an insignificant penalty. During that year and while in the employ of or associated with any MFDA Member, the Respondent will not be able to conduct securities related business, including dealing in syndicated mortgages. This prohibition offers a substantial measure of specific and general deterrence, as does the monetary penalty agreed to in this case.

20. The penalty agreed upon is not out of line with the cases cited by counsel for the MFDA or with the MFDA Sanction Guidelines.

21. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal affirmed the British Columbia Supreme Court's statement with respect to a settlement by the British Columbia Securities Commission at paragraph 49 of *British Columbia Securities Commission* v. *Seifert* [2006] BCJ No. 225, aff'd [2007] BCCA No. 484:

> "Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation."

22. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

23. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated

settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: "A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

24. The penalty agreed to in this case clearly falls within "a reasonable range of appropriateness."

25. For the above reasons the panel accepted the Settlement Agreement.

DATED this 20th day of January, 2020.

"Martin L. Friedland"
Martin L. Friedland, CC, QC
Chair

"Michael Coulter"
Michael Coulter
Industry Representative

"Joseph Yassi"
Joseph Yassi
Industry Representative

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