



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: Richard Verm Boker

Heard: February 22, 2022 by electronic hearing in Toronto, Ontario

Decision: February 22, 2022

Reasons for Decision: May 11, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart, Q.C.
Robert Christianson
Katarzyna Samayoa

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
)	
Michael A. M. Mantle)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Richard Verm Boker)	Respondent
)	
)	

I. INTRODUCTION

1. By Notice of Settlement Hearing, dated December 21, 2021, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced proceedings against Richard Verm Boker (the “Respondent”) indicating that an electronic hearing would be held on February 22, 2022, to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”), dated December 21, 2021, entered into between Staff of the MFDA (“Staff”) and the Respondent.

2. At the Settlement Hearing on February 22, 2022, the Hearing Panel, after hearing submissions of MFDA counsel and the Respondent and considering the Settlement Agreement, decided to accept it. These are our reasons for that decision.

II. AGREED FACTS

Registration History

3. From April 2004 until November 2019, the Respondent was registered as a dealing representative in Ontario with PFSL Investments Canada Ltd. (the “Member”), a Member of the MFDA.

4. From December 2009 until November 2019, the Member designated the Respondent as a Branch Manager.

5. On November 27, 2019, the Respondent resigned from the Member, and he is not currently registered in the securities industry in any capacity.

Personal Financial Dealings with Clients

6. Commencing in 2009, the Respondent requested loans from twelve clients (collectively, the “Clients”) in order to assist him to make timely payments on a mortgage secured against his personal residence and to pay other debt obligations he owed to creditors.

7. Between 2010 and 2018, the Respondent borrowed approximately \$177,908 from the Clients, as follows:

Client:	Date	Amount Borrowed
RL	2017	\$35,758
NR	2017	\$5,000
LL	2014	\$20,000
RA	2018	\$25,388
EW	2017	\$10,000
RL2	2017	\$5,726
JL	2012	\$10,000
JB	2010-2017	\$12,400
SE	2012	\$10,000
AC	2015	\$13,500
DL	2014-2018	\$20,136.22
RR	2018	\$10,000
		Total: \$177,908.22¹

8. With respect to clients RL and RA, the Respondent signed promissory notes that documented the principal amount, term, and the amount or rate of interest and fees payable on the amounts the Respondent borrowed. With the remaining ten Clients, the Respondent entered into verbal agreements with respect to the terms of the loans he obtained. The Respondent did not provide the Clients with any collateral as security for any of the loans.

9. With respect to Clients RL and RA, the promissory notes specified that the principal amount and interest were to be repaid on September 28, 2018 and June 27, 2019, respectively. Neither loan was repaid in full to Clients RL and RA as of those repayment deadlines specified.

10. For at least nine of the Clients (RL, NR, LL, RA, EW, RL2, AC, DL and RR) the source of the monies they loaned to the Respondent were redemptions from mutual funds they held in accounts at the Member. In three of these instances (Clients RL, NR, and RA, and RL2) the Clients incurred deferred sales charge fees arising from the redemption of mutual funds that ranged from approximately \$200 to \$1,400, and totaled approximately \$2,800. Two Clients (EW and RR)

¹ The Respondent also owed the Clients interest based on the terms of each specific loan.

incurred withholding taxes of approximately \$1,000 each as a result of the mutual fund redemptions that were processed in their investment accounts to facilitate loans to the Respondent.

11. The loans the Respondent obtained from the Clients gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the Clients.

12. As of September 2021, the Respondent provided evidence that he has repaid all the Clients in full. The Respondent states that the amounts repaid to the Clients included the deferred sales charge fees and withholding taxes referred to in paragraph 10 above.

Annual Attestations

13. Between 2010 and 2018, the Respondent signed the Member's annual attestations stating to the Member that he acknowledged, among other things, that he must not and will not accept money from a client, nor would he be involved in any kind of borrowing or money lending arrangements with a client.

III. CONTRAVENTIONS

14. The Respondent admitted that between 2010 and 2018, he engaged in personal financial dealings with clients by borrowing monies from clients, which gave rise to conflicts or potential conflicts of interest that he failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4² and 2.1.1.

IV. PROPOSED TERMS OF SETTLEMENT

15. The Respondent agreed to the following terms of settlement:

- a) the Respondent shall be prohibited for a period of seven years from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, commencing from the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

² On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct involved in this case pre-dated the amendment to that Rule, all references to that Rule in these Reasons for Decision are to the version of the Rule in effect between February 27, 2006 and June 30, 2021.

- b) the Respondent shall be permanently prohibited from acting as a Branch Manager or acting in any other MFDA related supervisory capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- c) the Respondent shall pay a fine in the amount of \$22,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- d) the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- e) the above payments shall be made in certified funds as follows:
 - i. \$5,000 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$5,000 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel; and
 - iii. \$17,000 (Fine) on or before the last business day of the first month following the date of the Settlement Agreement; and
- f) the Respondent shall in the future comply with MFDA Rules 2.1.4 and 2.1.1.

V. CONSIDERATIONS

Role of the Hearing Panel

16. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a Hearing Panel may only accept or reject a settlement agreement.

17. It is generally accepted that a hearing panel will not lightly interfere with a settlement agreement reached between Staff and a respondent and will not reject it unless it views the penalty as clearly falling outside a reasonable range of appropriateness. See, for example, *Sterling Mutuals Inc. (Re)*, LNCMFDA 16 at para. 37.

18. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily whether it: was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and previous MFDA cases; would serve as a specific and general deterrent; and was aligned with the MFDA's regulatory objectives to protect investors and strengthen public confidence in the mutual fund industry.

Misconduct

19. MFDA Rule 2.1.1 requires that each Approved Person deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

20. Pursuant to MFDA Rule 2.1.4 (as it was in effect at the relevant time), where an Approved Person becomes aware of any conflict or potential conflict of interest between the interests of the Approved Person and a client, the Approved Person must immediately disclose that conflict to his or her Member firm and address all such conflicts by the exercise of reasonable business judgment influenced only by the best interest of the client.

21. We found, as admitted by the Respondent, that between 2010 and 2018 he engaged in personal financial dealings with clients by borrowing monies from the Clients that gave rise to conflicts or potential conflicts that he failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the Clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

22. As was noted in MFDA Staff Notice #MSN-0047, dated October 3, 2005, "Borrowing from a client by...an Approved Person raises a significant and direct conflict that in almost all cases will be impossible to resolve in favour of the client."

23. In this case, the Respondent placed his own interests above those of the Clients and disregarded his regulatory responsibilities.

24. We are of the view that the Respondent's misconduct was particularly serious in that:

- a) it involved a relatively large amount of money and multiple clients;
- b) it involved a number of loans over a prolonged period of time;
- c) the Respondent obtained a personal benefit from the loans by accessing capital which he may not have been able to otherwise obtain on similar terms and to which he was not entitled as his conduct breached his regulatory obligations;
- d) most of the loans were undocumented and none were secured by collateral, thereby putting the Clients' funds at risk;
- e) the Respondent failed to fully repay two of the loans within the timeframes set out in the related promissory notes, although he eventually repaid them;

- f) the Respondent was a branch manager who should have been aware of the rules and had responsibility for supervising compliance with them;
- g) in at least nine of the cases the source of the loans was redemptions of mutual funds that the Clients held at the Member, and in some cases resulted in the Clients incurring deferred sales charges and withholding taxes, although the Respondent stated he repaid those amounts; and
- h) the Respondent misled the Member when he signed the annual attestations relating to borrowing money from clients.

Penalty

25. In our opinion the serious nature of the Respondent's misconduct warranted a significant sanction.

26. In determining an appropriate sanction, we considered the following as mitigating factors:

- a) the Respondent had not previously been the subject of disciplinary proceedings by the MFDA;
- b) there was no evidence of client complaints; and
- c) by entering into the Settlement Agreement, the Respondent accepted responsibility for his misconduct and saved the MFDA the time, resources and expense of conducting a full hearing in the matter.

27. We also considered the fact that the Respondent has not been registered in the securities industry since November 27, 2019.

28. In our view, the sanction in this case should serve to deter the Respondent from future misconduct, in the event that he decides to rejoin the securities industry following the seven year prohibition. It should also deter others from engaging in similar misconduct by sending a message that such misconduct will be met by meaningful sanctions.

29. The proposed sanction was within an appropriate range of reasonableness, having regard to previous MFDA cases in somewhat similar circumstances. MFDA counsel directed our attention in particular to the three cases summarized below.

Case:	Contraventions:	Penalty:
<p><i>Yalkezian (Re)</i> , MFDA File No. 202164, Hearing Panel of the Central Regional Council, Reasons for Decision dated March 3, 2022</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Engaged in personal financial dealings with clients by borrowing money from an 82 year old client (\$123,283.66 total) to pay personal and business expenses. Paid the borrowing costs associated with the leveraged investment strategies that he had recommended to 3 clients. Lent a total of \$142,400 to 9 clients (\$139,317 of which was repaid to the Respondent by those clients. Misled the Member regarding the source of the monies that three clients used to pay the borrowing costs of their leveraged investments. Engaged in an unapproved outside activity. <p>Other Factors:</p> <ul style="list-style-type: none"> The Respondent fully repaid the client loan that he had obtained. The Respondent paid more than \$93,000 to cover borrowing costs of the clients in leveraging strategies that were not repaid to him. No clients complained with regard to the Respondent’s conduct. The Respondent had not previously been the subject of MFDA disciplinary proceedings. 	<p>Settlement:</p> <ul style="list-style-type: none"> \$25,000 fine \$5,000 costs Five year prohibition
<p><i>Rahman (Re)</i> , MFDA File No. 202074, Hearing Panel of the Central Regional Council, Decision and Reasons dated June 10, 2021</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Engaged in personal financial dealings with clients by borrowing monies (roughly \$74,000) from clients, lending monies to a client, and depositing monies belonging to clients into his personal bank account. Aided a client to falsely portray monies as a gift to assist the client in securing a mortgage. Deposited \$20,000 in cash, which he borrowed from a client, into bank accounts he controlled in three transactions of less than \$10,000 each, thereby circumventing the large cash transaction reporting requirements to the Financial Transaction and Reports Analysis Centre of Canada. Made false or misleading statements to the Member during an investigation into his conduct. <p>Other Factors:</p> <ul style="list-style-type: none"> All client money obtained by the Respondent was repaid by the Respondent. There was no evidence of client complaints. Investors did not suffer any financial harm because of the Respondent’s misconduct. 	<p>Settlement:</p> <ul style="list-style-type: none"> \$20,000 fine \$5,000 costs Five year prohibition
<p><i>Davidson (Re)</i> , MFDA File No. 202018, Hearing Panel of the Central Regional Council, Decision and Reasons dated June 29, 2021</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Engaged in personal financial dealings with a client when he borrowed or otherwise accepted approximately \$18,000 from one or more clients. Submitted three annual compliance questionnaires to the Member that contained false or misleading responses. Failed to disclose to the Member that he had filed a consumer proposal in January 2015. <p>Other Factors:</p> <ul style="list-style-type: none"> One client suffered a loss of over \$12,000. The Respondent profited by receiving \$18,000, without interest. Clients were partially repaid. 	<p>Uncontested Hearing:</p> <ul style="list-style-type: none"> \$25,000 fine \$7,500 costs Permanent prohibition

30. While the Hearing Panel decided to accept the Settlement Agreement, we were inclined to the view that the seven year prohibition was at the low end of the range of appropriateness in the circumstances of this case.

VI. CONCLUSION

31. We concluded that the proposed sanction was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's conduct and previous cases. It should serve as a specific and general deterrent. We were also of the view that it is aligned with the MFDA's regulatory objectives. Accordingly, we decided to accept the Settlement Agreement.

DATED this 11th day of May, 2022.

"Joan Smart"

Joan Smart

Chair

"Robert Christianson"

Robert Christianson

Industry Representative

"Katarzyna Samayoa"

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Industry Representative

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