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: Anthony Peter Chiaravalloti

Heard: May 17, 2022 by electronic hearing in Toronto, Ontario
Decision: May 17, 2022
Reasons for Decision: June 23, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Honourable Robert P. Armstrong, Q.C.	Chair
Kenneth Mann	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Anthony Peter Chiaravalloti	)	Respondent

I. INTRODUCTION

1. Mr. Anthony Peter Chiaravalloti (the "Respondent") was registered in Ontario as a dealing representative with the Investors Group Financial Services Inc., a member of the Mutual Funds Dealers Association ("MFDA"). In these reasons Investors Group will be referred to as the "Member".

2. The Respondent stands charged with the following violations of the By-Laws, Rules or Policies of the MFDA as follows:

a) in October 2015, he entered into a referral arrangement with a third party and earned compensation for referring a client to purchase syndicated mortgage investments, thereby participating in a referral arrangement to which the Member was not a party, contrary to the Member's policies and procedures and MFDA Rules 2.4.2, 2.1.1, 2.5.1, and 1.1.2;

b) between August 2017 and June 2019, he engaged in unapproved outside business activities by establishing, operating, or acting as a director with respect to two companies and promoting or holding himself out as engaging in a mediation business without the prior approval of the Member, contrary to the Member's policies and procedures and MFDA Rules 1.3.2, 1.2.5, 2.1.1, 2.5.1, and 1.1.2; and

c) between March 2016 and March 2019, he provided false or misleading statements to the Member on annual compliance questionnaires, contrary to MFDA Rule 2.1.1.

3. On May 16, 2022, the Respondent entered into a settlement agreement (the "Settlement Agreement") with the Staff of the MFDA whereby he agreed to a statement of Agreed Facts in the resolution of the above allegations against him.

4. On May 17, 2022, this Panel convened a hearing to consider the terms of the Settlement Agreement and to accept or reject the settlement if so advised.

5. The Respondent was represented by counsel in respect of the negotiations of the Settlement Agreement. However, the Respondent attended the hearing without counsel.

6. Pursuant to the terms of the Settlement Agreement the Respondent admitted the allegations above described and agreed to the imposition of the sanctions set out in the Agreement. The material facts are taken from the Settlement Agreement and are set out below. For the reasons that follow this Panel accepts the settlement reached by the parties.

II. INAPPROPRIATE REFERRAL ARRANGEMENT

7. Between March 27, 2014, and June 26, 2019, the Respondent was registered in Ontario as a dealing representative with the Member. The Member terminated the Respondent on June 26, 2019.

8. Between 2014 and 2019, the Respondent carried on business in Richmond Hill, Ontario. The Member's policies and procedures required that its Approved Persons only participate in referral arrangements approved by the Member and that all fees and commissions for all such arrangements are recorded in the books of the Member.

9. VL was a client of the Member. His accounts were serviced by the Respondent. Fortress Real Developments Inc. ("Fortress") was a real estate development company, which offered investments in syndicated mortgages. Fortress was involved in projects in Vaughan, Ontario and Winnipeg, Manitoba.

10. FFM Capital Inc. ("FFM") and Centro Mortgage Inc. ("Centro") were mortgage brokerage companies who marketed and sold syndicated mortgage investments for Fortress. The Respondent referred VL to FFM in September 2015. The Respondent attended a meeting with VL and representatives of FFM and/or Centro where VL signed documents to invest in the two projects in Vaughan and Winnipeg referred to above. VL invested $100,000.00 in each project although the Respondent recommended against making both investments.

11. The investments made by VL were funded from redeemed investments held by VL's spouse with the Member. The Respondent did not advise the Member that VL intended to invest the proceeds of redemption in the syndicated mortgages.

12. In November 2015, the Respondent received $12,000.00 as a referral fee in respect of the above investment. The Respondent had not obtained approval from the Member to enter into the referral arrangement. The referral fee was not recorded in the books of the Member.

13. VL received a $100,000.00 return of principal on one of the investments after 2 years. VL suffered a loss of $100,000.00 on the other investment.

III. INAPPROPRIATE OUTSIDE BUSINESS ACTIVITIES

14. The Member's policies and procedures required its Approved Persons to disclose and obtain approval from the Member prior to engaging in any outside business activities. The

Respondent engaged in 3 outside business activities without the appropriate disclosure and approval described below.

Cornucopia Labs Incorporated ("Cornucopia")

15. In August 2017, the Respondent and others set up Cornucopia, a financial technology company, which said it provided "education, coaching and financial services to help Canadians realize their goals." The Respondent was the director of the company. He was listed on the company website as CEO, using the name, "Anthony Chev", which was a short version of his name used since childhood.

16. The Respondent invested approximately $20,000.00 in the company which was to develop proprietary artificial intelligence software. The Respondent's activities with Cornucopia involved making presentations to local businesses, establishing an Instagram account where he published general information about investing and personal finances. He also hosted a podcast using the title "The Wise Investor". The Respondent did not disclose this activity to the Member or obtain approval for his activities with Cornucopia.

King Street Media

17. The Respondent was also engaged with King Street Media, which provided digital marketing services for small businesses in Ontario. The Respondent started this business in about 2017. He was listed as a Creative Director under the name, "Anthony Chev", on the company website. The Respondent did not disclose to the Member or obtain its approval to engage in this outside business activity.

Mediation Company

18. At some time in 2019, the Respondent was involved in a mediation business for providing advice to families in complex financial situations. The Respondent was not permitted to hold himself out in such a manner pursuant to MFDA Rule 1.2.5 and the Member's policies and procedures. These activities were never disclosed to the Member nor approved by it.

IV. FALSE AND MISLEADING STATEMENTS TO MEMBER

19. During the years 2016 to 2019, the Respondent completed 4 Annual Compliance Certificates and submitted to the Member for the years 2015, 2016, 2017 and 2018, which were false or misleading.

20. In the above certificates the Respondent stated:

i. he had not been paid referral fees or received referral fees (including indirect compensation) from any third party other than through the Member;

ii. he was not, and had not been, involved in any undisclosed and unapproved outside activity; and

iii. he had not established a website, web-blog, social media profile or similar forum, (other than corporately approved websites) for the purpose of promoting his business or marketing products and services that have not been approved by the Member.

In fact, in 2015 the Respondent received referral fees from a third party other than the Member. In 2017 and subsequently he engaged in outside business activities as well and promoted his business on the internet without the knowledge or approval of the Member.

V. ADDITIONAL FACTORS

21. As a result of VL making a complaint to the MFDA concerning the syndicated mortgage transactions the Member conducted a thorough investigation which led to the issue of the Notice of Hearing herein, which set out the alleged violations of the Member's policies and procedures and MFDA Rules. As a result of the complaint and the investigation the MFDA learned for the first time of the Respondent's outside business activities, which are referred to in the Notice of Hearing.

22. The investigation also included a review of several large dollar redemptions submitted for processing and sent by the Respondent. The MFDA was satisfied that they were all supported by notes and correspondence that demonstrated the monies were not intended for outside investments.

23. The investigation also involved the Member sending a letter to all the clients of the Respondent advising of the Respondent's involvement in the above activities and requested the clients to contact the Member if they had any concerns. There were no responses to that letter.

24. The Respondent has provided the MFDA with evidence that he has limited earnings since his termination by the Member and that he has significant debts.

25. By entering into the Settlement Agreement, it is agreed by the parties that the Respondent has saved the MFDA the time, resources, and expenses of a full hearing on the merits.

26. The Respondent has not before been the subject of a MFDA discipline proceeding.

VI. THE PROPOSED PENALTY

27. The Settlement Agreement includes the following proposed penalty:

a) the Respondent shall be prohibited from conducting securities related business while in the employ of or association with a Member of the MFDA for a period of 3 years from the date the Settlement Agreement is accepted, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

b) the Respondent shall pay a fine in the amount of $15,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

c) the Respondent shall pay costs in the amount of $5,000, pursuant to section 24.2 of MFDA By-law No. 1;

d) the Respondent shall pay the fine and costs in instalments as follows:

i. $5,000 (fine) and $5,000 (costs) payable in certified funds on the date the Settlement Agreement is accepted;

ii. $1,000 (fine) payable on or before July 29, 2022;

iii. $1,000 (fine) payable on or before August 31, 2022;

iv. $1,000 (fine) payable on or before September 30, 2022;

v. $1,000 (fine) payable on or before October 31, 2022;

vi. $1,000 (fine) payable on or before November 30, 2022;

vii. $1,000 (fine) payable on or before December 30, 2022;

viii. $1,000 (fine) payable on or before January 31, 2023;

ix. $1,000 (fine) payable on or before February 28, 2023;

x. $1,000 (fine) payable on or before March 31, 2023; and

xi. $1,000 (fine) payable on or before April 28, 2023;

e) the Respondent shall in the future comply with MFDA Rules 2.4.2, 1.3.2, 1.2.5, 2.1.1, 2.5.1, and 1.1.2;

f) the Respondent will attend by videoconference on the date set for the Settlement Hearing.

VII. THE SUBMISSIONS OF STAFF OF THE MFDA

28. Counsel for MFDA provided detailed and lengthy written submissions in support of the Settlement Agreement. Counsel summarized his submissions in the Settlement Hearing. In view

of the fact that the Respondent admitted the alleged breaches and cooperated fully with the MFDA it is not necessary to repeat the detailed submissions of counsel.

29. We shall set out here our reasons for accepting the Settlement Agreement and the proposed sanctions.

30. The conduct of the Respondent in this case represents serious breaches of the Member's policies and procedures and the MFDA Rules 2.4.2, 2.1.1, 2.5.1 and 1.1.2 as detailed in the Notice of Hearing and the submissions of counsel for the MFDA.

31. We accept the submissions of counsel that there are two issues for this Panel to determine:

a) Do the facts admitted by the Respondent constitute misconduct and contravention of the MFDA By-Law, Rules, Policies or Provincial Securities Legislation?

b) Does the sanction agreed to in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances?

32. We agree that it is generally accepted that Hearing Panels will not lightly interfere in a Settlement Agreement concluded between Staff and a Respondent. See *Professional Investments (Kingston) Inc. (Re*), 2009 LNCMFDA 9 at para. 13:

> In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. **In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.** As has been said: "The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made. *(Emphasis added).*

33. Counsel for MFDA submits in arriving at a conclusion that a proposed settlement should be accepted the following principles come into play:

a) whether acceptance of the settlement agreement would be in the public interest and whether the sanction imposed will protect investors;

b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the respondent as set out in the settlement agreement;

c) whether the settlement agreement addresses the issues of both specific and general deterrence;

d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;

e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;

f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and

g) whether the settlement agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), 2016 LNCMFDA 77 at para. 13.

Unapproved Referral Arrangements

34. Counsel submits, as described above, that the Respondent referred one of his clients to a development company and a mortgage broker in connection with the purchase of syndicated mortgages for which he received a fee of $12,000.00. Rule 2.4.2 requires referral arrangements should be conducted with the approval of the Member and that related fees be recorded in the Member's books. Rule 2.4.2 has been clearly breached on the facts admitted.

Outside Business Activities

35. The Respondent admitted that he engaged in outside business activities, which were not disclosed nor approved by the Member. These included the Cornucopia Labs Incorporated, The Wise Investor business, the King Street Media Inc. business, and the mediation business. MFDA Rule 1.3.2 requires Approved Persons to disclose such outside activities to the Member and obtain approval. There was no such disclosure, which resulted in a breach of MFDA Rule 1.3.2.

36. The Respondent referred to himself as a "financial expert and planner" contrary to MFDA Rule 1.2.5, which prohibits the use of any designation of any qualifications that deceives or misleads or could reasonably be expected to deceive or mislead. On the evidence before us there was a clear breach of MFDA Rules 1.3.2 and 1.2.5.

Standard of Conduct

37. Rule 2.1.1 provides in part:

Each Member and each Approved Person of a Member 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 the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

Counsel for the MFDA submits that the conduct of the Respondent as described breached the above provision. We agree that the conduct as described above breached the provisions of Rule 2.1.1(a)(b)(c)(d).

Misleading the Member

38. The Respondent admits that over a 4-year period he submitted false answers on the Member's Annual Compliance Certificates. Each year he stated he had not been paid referral fees from any third party other than a Member; that he was not involved in any undisclosed or unapproved activities; and he had not established a website, web blog, social media profile or similar form…for the purpose of promoting his business or marketing products and services that have not been approved by the Member.

39. All the above statements were false and constitute breaches of MFDA Rule 2.1.1.

Contravention of Policies and Procedures

40. The Member's policies and procedures required its approved persons:

a) only participate in referral arrangements where the Member has approved the referral arrangement and is a party to a written referral arrangement; and

b) disclose to, and obtain approval from, the Member prior to engaging in any outside business activities.

41. Counsel submits: "…by engaging in securities related business outside the Member and entering into an unapproved referral arrangement, the Respondent contravened the Member's policies and procedures and MFDA Rules 2.5.1 and 1.1.2." We agree.

VIII. THE SANCTIONS ARE WITHIN A REASONABLE RANGE OF APPROPRIATENESS

42. Counsel for the MFDA submits that the goal of securities regulation is protection of the investing public. See *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 S.C.R. 557 at para. 59. Counsel submits among the factors that ought to be considered in a case such as this are the seriousness of the misconduct, the Respondent's recognition of the seriousness of the misconduct and the harm suffered by the investors.

43. The Respondent has not been subject to a prior disciplinary offence. Counsel for the MFDA submits that the Respondent recognizes the seriousness of his misconduct. He has accepted responsibility for his actions and avoided the expense of a full discipline hearing.

44. Counsel submits that the proposed sanction serves the purpose of both specific and general deterrence. By virtue of his requirement to stay out of the industry for 3 years and to pay a fine of $15,000.00 the important principles for both specific and general deterrence are served.

45. Taking all the above factors into account this Panel is satisfied that the proposed penalties are within a reasonable range of appropriateness.

DATED this 23rd day of June, 2022.

"Robert P. Armstrong"
The Hon. Robert P. Armstrong, Q.C.
Chair

"Kenneth P. Mann"
Kenneth P. Mann
Industry Representative

"Joseph Yassi"
Joseph Yassi
Industry Representative

DM 891895