



**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: Helen Collymore**

Heard: September 29, 2022 by electronic hearing in Toronto, Ontario

Decision: September 29, 2022

Reasons for Decision: December 14, 2022

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

|  |                         |
|--|-------------------------|
| The Honourable Robert P. Armstrong, K.C. | Chair                   |
| Patrick Galarneau                        | Industry Representative |
| Michael-Murray Coulter                   | Industry Representative |

Appearances:

|                 |   |   |
|-----------------|---|---|
| Brendan Forbes  | ) | Enforcement Counsel for the Mutual Fund Dealers Association of Canada |
|                 | ) |   |
| Justin Papazian | ) | Counsel for Respondent  |
|                 | ) |   |
| Helen Collymore | ) | Respondent  |
|                 | ) |   |

## I. INTRODUCTION

1. Since 2001, the Respondent has been registered in Ontario as a dealing representative with Investors Group Financial Services Inc. (the “Member”). The Respondent has also been registered in Quebec since 2006, and in Alberta between 2006 and 2014.

2. Between 2009 and 2012, the Member designated the Respondent as a branch manager. The Respondent conducted her business in Mississauga, Ontario.

3. The Respondent has been charged with the following alleged violations of the By-Laws, Rules or Policies of the MFDA:

**Allegation #1:** On or about September 4, 2009, the Respondent opened a new account and processed a purchase of mutual funds in respect of a client who was a non-resident of Canada, which the Respondent was not permitted to do pursuant to the policies and procedures of the Member, and MFDA Rules 2.1.1, 2.5.1 and 1.1.2.

**Allegation #2:** Between 2007 and 2019, the Respondent failed to update a client’s residential address which concealed from the Member that the client was no longer a resident of Canada and, consequently, that there were restrictions on the investment services that the Respondent was permitted to provide the client and the investments held by the client at the Member would be subject to different tax treatment, contrary to the Member’s policies and procedures and MFDA Rules 2.2.1, 2.2.4, 2.5.1 and 1.1.2.

4. The Respondent and the MFDA entered into a Settlement Agreement in respect of the above allegations on August 17, 2022. A hearing was held by this Panel on September 29, 2022, to determine whether the Settlement Agreement should be accepted. For the reasons that follow this Panel accepted the terms of the Settlement Agreement.

## II. THE SETTLEMENT AGREEMENT

5. The Respondent admitted the underlying facts in respect of the alleged violations, which were set forth in the Settlement Agreement.

6. The Respondent agreed that she opened an account and processed a trade for a client who did not reside in Canada. The following paragraphs taken from the Settlement Agreement are accepted by the Respondent:

11. At all material times, the Member’s policies and procedures prohibited existing clients who reside in the United States (“US”) from opening new accounts and making contributions into Member accounts, as follows:

Existing clients who are U.S. residents will not be permitted to open new plans.

If an existing Investors Group client moves to the U.S., the federal and state securities and insurance laws of the U.S. impose restrictions on the service that Investors Group and Consultants can provide to U.S. residents. Existing Investors Group clients who have relocated to the U.S. and have decided to retain their accounts with Investors Group will be allowed to do so, subject to the following restrictions...new deposits into any Investors Group sponsored investment product cannot be accepted.

12. In 1991, client TW became a client of the Member, and in 2006, the Respondent became the Approved Person responsible for servicing her accounts.

13. On or about January 7, 2007, client TW ceased residing in Canada and moved to the US.

14. Around the time when she moved to the US, client TW requested that the Respondent update her address documented in the Member's records to a new Canadian address for her accounts (the "Canadian Address").

15. The Respondent states that at this time, she was not aware that client TW would no longer be residing in Ontario.

16. At the time that she moved to the US, client TW held both registered and non-registered accounts at the Member.

17. By no later than September 4, 2009, the Respondent knew that client TW was not residing in Canada.

18. On September 4, 2009, after the Respondent was aware that client TW was no longer residing in Canada, the Respondent opened a new non-registered account on behalf of client TW, in trust for her niece and purchased a mutual fund in the account, contrary to the Member's policies and procedures.

19. At all material times, the Member's policies and procedures required its Approved Persons to review and update Know-Your-Client ("KYC") information when a material change in client circumstances occurred.

20. As described above, no later than September 2009, the Respondent was aware that client TW was not residing in Canada. Client TW's change in residency amounted to a material change in client circumstances that required the Respondent to update KYC information including client TW's residential address documented in the records of the Member associated with client TW's investment accounts.

21. While client TW was residing in the US, the Respondent and client TW had a number of communications regarding client TW's accounts at the Member, including the following:

- a) between 2010 and 2013, client TW provided the Respondent or her assistants with various addresses in the US to which client TW's quarterly account statements should be sent;

- b) in 2016, client TW instructed the Respondent to redeem monies from her Member accounts in order to pay expenses that client TW had incurred in the US;
- c) in 2017, client TW requested changes in her accounts, as client TW had become aware of potential penalties that client TW might incur by holding investments outside of the US; and
- d) in 2017 client TW inquired whether her Registered Educational Savings Plan (“RESP”) account could be transferred from client TW’s daughter to her niece, as her daughter could not use the proceeds of the RESP in the US.

22. The Respondent failed to update client TW’s KYC information, or notify the Member of client TW’s address change. This concealed from the Member that the client was no longer a resident of Canada and would therefore be subject to different tax treatment in respect of the client’s investments held at the Member as described below.

23. In 2013 and 2016, at the request of client TW, the Respondent redeemed monies from client TW’s RRSP account. The Member was not aware that client TW no longer resided in Canada, and as a result, the Member:

- a) applied withholding tax calculations on the redemptions applicable to a Canadian resident rather than those applicable to a US resident; and
- b) issued and provided Client TW with the tax slips applicable to investments redeemed by a Canadian resident rather than those redeemed by a US resident.

24. Between 2007 and 2017, client TW earned income distributions from her non-registered investment accounts. As the Member was unaware that client TW did not reside in Canada, it issued client TW tax slips for this income applicable to a Canadian resident and did not apply withholding tax to the income. Had the Member been aware that client TW resided in the US, it would have issued her tax slips applicable to a US resident and applied withholding tax to the income.

25. Client TW incurred a tax liability with the Canada Revenue Agency (the “CRA”) arising from the incorrect application of withholding taxes on her RRSP redemptions and income distributions from her non registered accounts.

26. In December 2019, client TW complained to the Member that she had incurred a tax liability with CRA as a result of the fact that the residential address associated with her accounts at the Member was Canadian.

27. Client TW is continuing to deal with the CRA with respect to the quantification of her outstanding tax liability. The Member’s complaint handling process in response to Client TW’s complaint is on-going pending the outcome of Client TW’s negotiations with the CRA about the amount of her outstanding tax liability.

28. On July 3, 2020, the Member issued a warning letter to the Respondent for failing to meet her KYC obligations and for failing to accurately update the client's residency status.

7. Having agreed to the above facts the Respondent admitted that she violated the By-laws, Rules or Policies of the MFDA as alleged. Finally, she agreed to the proposed penalties contained in the Settlement Agreement as follows:

- a) The Respondent shall pay a fine of \$7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No.1;
- b) The Respondent shall pay costs of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- c) The Respondent shall in the future comply with MFDA Rules 1.1.2, 2.1.1, 2.2.1, 2.2.4, and 2.5.1; and
- d) The Respondent shall attend in person or via teleconference on the date set for the Settlement Hearing.

### **III. SUBMISSIONS OF COUNSEL FOR THE MFDA**

8. Counsel for the Staff of the MFDA filed an 18-page document containing submissions in support of the Settlement Agreement. Given this matter proceeded by way of agreement it is not necessary to repeat the submissions in detail. However, a shorter summary of those submissions is provided.

#### **i) Allegation #1 – Opening an Account for a Non-Resident of Canada**

9. Where an approved person such as Ms. Collymore opens an account for a client using a Canadian residential address when the client does not reside in Canada such Approved Person contravenes Rule MFDA 2.1.1.

See *Pekel (Re)*, [2021] Hearing Panel of the Central Regional Council, MFDA Hearing No. 202007, Reasons for Decision dated January 7, 2021.

10. Counsel submits that if an inaccurate address for a client is recorded by the Member the Member is not able to ensure that the regulations, policies and procedures of the Member and tax implications that may be applicable are properly taken into account when servicing the client's account. In the present case the Respondent became aware as of September 2009, that her client TW resided in the United States. In this case the client incurred a tax liability that she subsequently complained about to the Member contrary to MFDA Rule 2.1.1.

**ii) Allegation #2 – Failing to Adequately Record Know-Your-Client Information**

11. Counsel for Staff submits that pursuant to MFDA Rule 2.1.1 Approved Persons are required to take reasonable steps to:

- a) learn the essential facts relative to each client and to each order or account accepted;
- b) ensure the acceptance of any order for any account is within the bounds of good business practice; and
- c) ensure that each order accepted, or recommendation made, including recommendations to borrow to invest, for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account; and
- d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client and in keeping with the client's investment objectives, the Member has so advised the client before execution thereof.

12. Pursuant to MFDA Rule 2.2.4 when an Approved Person learns of a material change in its client's circumstances the client's KYC information must be updated.

*See DeVuono (Re)*, [2012] Hearing Panel of the Pacific Regional Council, MFDA Hearing No. 2021102, Reasons for Decision dated November 22, 2012 at para. 54.

Failure to record or update a client's KYC information is a contravention of Rule 2.2.1.

*See Wighton (Re)*, [2020] Hearing Panel of the Central Regional Council, MFDA Hearing No. 2018123, Reasons for Decision dated February 19, 2020 at para. 22.

Such failure has also been held to be a breach of section 2.2.4 of the MFDA Rules.

*See Moroz (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA Hearing No. 201633, Reasons for Decision dated August 22, 2018.

13. In this case the Respondent knew as of September 2009, that her client resided in the United States. However, the Respondent facilitated the opening of a new account of her client and processed various redemptions from her client's RRSP account using a Canadian residential address, when she knew the client was no longer resident in Canada.

14. The failure of the Respondent to update the client's KYC information caused her client to attract tax liability with the CRA as a result of the incorrect application of withholding taxes on redemptions from her accounts. The failure to update the KYC information also resulted in the opening of new accounts which were in contravention of the Member's Policies and Procedures.

#### **IV. POSITION OF THE RESPONDENT**

15. Counsel for the Respondent advised that his client accepted the Settlement Agreement including the Agreed Statement of Facts and the Proposed Penalties. In these circumstances he had nothing further to add.

#### **V. THE DECISION OF THIS PANEL**

16. This Panel accepts the Settlement Agreement and the Proposed Penalties outlined above. In doing so we set forth in the following paragraphs our reasons for acceptance.

17. In our view the Proposed Penalties clearly fall within a reasonable range of appropriateness.

*See Sterling Mutuals Inc. (Re)*, [2008] Hearing Panel of the Central Regional Council, MFDA Hearing No. 200820, Reasons for Decision dated September 3, 2008 at para. 37.

18. The Proposed Penalties are appropriate taking into account the following factors as submitted by counsel for the MFDA:

- a) the settlement agreement is in the public interest and the penalty imposed will protect investors;
- b) the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- c) the settlement agreement addresses the issues of both specific and general deterrence;
- d) the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- e) the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f) the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) the settlement agreement will foster confidence in the regulatory process itself.

*See Jacobson (Re)*, [2007] Hearing Panel of the Prairie Regional Council, MFDA Hearing No. 200712, Reasons for Decision dated July 13, 2007 at para. 70.

We are satisfied that the Proposed Penalties satisfy all of the above factors.

19. In arriving at our decision, we have taken into account that this is a “first offence” for this Respondent and that she has acknowledged that her conduct constitutes a serious contravention of

the MFDA Rules. We also note by entering into the Settlement Agreement the Respondent has accepted responsibility for the conduct and has saved the MFDA the time, resources, and expenses associated with a contested disciplinary hearing. We note that the Respondent has not previously been subject to any MFDA disciplinary hearing. She is a first offender.

20. We note that the Proposed Penalties will act as a general deterrent by reenforcing the message that Approved Persons must take appropriate steps to collect, record and update the KYC information of their clients. We are of the view that the severity of the penalty in this case against the Respondent will deter other individuals from engaging in similar misconduct. Finally, we note that the Staff of the MFDA has acknowledged that the Respondent's conduct does not appear to be intentional or malicious in nature. That said, where an Approved Person does not meet their obligations under the MFDA Rules the imposition of a sanction in this case serves the principle of general deterrence to ensure future compliance not only in respect of the Respondent but others who might be inclined to engage in such conduct.

**DATED** this 14<sup>th</sup> day of December, 2022.

“Robert P. Armstrong”  
The Honourable Robert P. Armstrong, K.C.  
Chair

“Patrick Galarneau”  
Patrick Galarneau  
Industry Representative

“Michael-Murray Coulter”  
Michael-Murray Coulter  
Industry Representative

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