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: Stephen Christopher Gilbert Cragg

Heard: February 27, 2020 in Toronto, Ontario
Decision: February 27, 2020
Reasons for Decision: April 14, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart	Chair
Linda J. Anderson	Industry Representative
Jeff Page	Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Ellen Bessner	)	Counsel for the Respondent
Stephen Christopher Gilbert Cragg	)	Respondent, in person

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada ("MFDA") commenced proceedings against Stephen Christopher Gilbert Cragg (the "Respondent"), by Notice of Settlement Hearing, dated December 6, 2019, indicating that a settlement hearing would be held on February 27, 2020 in relation to a settlement agreement, dated December 6, 2019, (the "Settlement Agreement") entered into between staff of the MFDA ("Staff") and the Respondent.

2. At the conclusion of the settlement hearing on February 27, 2020, after hearing the submissions of counsel and considering the Settlement Agreement, the Hearing Panel decided to accept the Settlement Agreement. These are our reasons for that decision.

II. THE RESPONDENT'S ADMISSION OF CONTRAVENTIONS

3. The Respondent admitted to the following violations of the Rules of the MFDA:

a) commencing no later than August 23, 2005, the Respondent engaged in personal financial dealings with client LW that gave rise to a conflict or potential conflict of interest with the client which 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 client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1.1;

b) in November 2017, the Respondent made false and misleading statements to the Member during the course of an investigation by the Member into his conduct, contrary to MFDA Rule 2.1.1; and

c) in November 2017, in response to a supervisory inquiry, the Respondent submitted a document to the Member relating to his personal financial dealings with a client, upon which the Respondent signed the client's signature, contrary to MFDA Rule 2.1.1.

III. TERMS OF PROPOSED SETTLEMENT

4. Staff and the Respondent agreed to the following terms of settlement:

a) the Respondent shall pay a fine in the amount of $25,000 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 in the amount 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 successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an industry course acceptable to Staff of the MFDA, within 6 months of the acceptance of the Settlement Agreement, pursuant to s. 24.1.1(f) of MFDA By-law No. 1; and

d) the Respondent shall in the future comply with MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1.1.

IV. AGREED FACTS

Registration History

5. Since April 2004, the Respondent has been registered as a mutual fund salesperson (now known as a dealing representative)[1] with Quadrus Investment Services Ltd. (the "Member"), a Member of the MFDA.

The Member's Policies and Procedures

6. Commencing in September 2006, the policies and procedures of the Member prohibited Approved Persons from:

(a) "entering into any situation that places, or appears to place, [the Approved Person] in a conflict of interest with [their] clients";
(b) "engaging in personal financial dealings with clients"; and
(c) "[b]orrowing from or lending to clients for any reason."

[1] In September 2009, the registration category mutual fund salesperson was changed to "dealing representative" when National Instrument 31-103 came into force.

Personal Financial Dealings

7. The Respondent and his wife, BC, were acquaintances of LW. On August 23, 2005, LW became a client of the Member whose accounts were serviced by the Respondent. At the time of becoming a client of the Member, LW was 68 years old and retired.

8. In July 2005, prior to LW becoming a client of the Member, the Respondent and his wife, BC, provided three promissory notes (the "Promissory Notes") to LW.

9. The Promissory Notes were signed by the Respondent, BC and LW and stated that the Respondent and BC "promise[d] to pay" $5,000 to LW under the following terms:

Date of the Promissory Note	Principal	Term	Interest Rate
July 1, 2005	$1,300	4 months	8%
July 5, 2005	$2,000	4 months	8%
July 15, 2005	$1,700	4 months	8%
Total: $5,000			

10. LW provided the monies to the Respondent and BC on or about the dates listed above. The monies were deposited into a joint account belonging to the Respondent and BC. The Respondent stated that the monies were used to pay tax arrears for a company operated by BC.

11. Between August 2005 and December 2006, the Respondent and BC made periodic payments to LW totaling $5,000. For each of the payments, the Respondent and LW signed receipts indicating proof of payment (the "Receipts").

12. The final Receipt, dated December 21, 2006, (the "December 21, 2006 Receipt") was signed by the Respondent and LW, and stated that the receipt was "Payment in Full."

13. At no time did the Respondent disclose to the Member that he: obtained monies from LW; entered into the Promissory Notes; promised to pay monies to LW; or made the payments to LW as described above.

14. On July 2, 2017, LW passed away.

15. On October 23, 2017, the executor of the estate of LW contacted the Member and requested that it confirm whether the Respondent had repaid the monies owing to LW.

16. On November 9, 2017, the Member contacted the Respondent and requested information about the status of the Promissory Notes, as well as whether the Respondent had disclosed the existence of the Promissory Notes to the Member in the past.

17. In his response to the Member, the Respondent stated, among other things, that he had repaid the amounts owing to LW pursuant to the Promissory Notes.

18. The executor of the estate of LW disputed the Respondent's claim, and asserted that the Respondent and BC had failed to repay the interest amounts owing to LW pursuant to the Promissory Notes.

The Respondent Made False and Misleading Statements to the Member and Signed a Client's Signature on a Document Provided to the Member

19. As part of its investigation into the Respondent's conduct, the Member requested information from the Respondent in respect of the interest amount which the executor of the estate of LW alleged remained owing.

20. On November 28, 2017, the Respondent sent an email to the Member which provided a copy of a document entitled "Notice Of Completion Of Payment In Full" (the "Notice") which was purportedly signed by the Respondent and LW on December 28, 2006. The Notice stated:

> "This note is to certify that the loans and interest combined totalling $5,000.00 have been paid in full as of Thursday December 21, 2006 by [the Respondent] and [BC].
>
> I [LW] am satisfied that no other money is owed and that [the Respondent] and [BC] have satisfied their arrangements with me to pay the combined total of principle and interest that was owing to me [LW] of $5,000.00.
>
> This note is to further notify and instruct my family or any solicitor to take NO action or legal action against [BC] or [SC] for me [LW] agreeing to make a principle and interest loan in the total amount of $5,000.00 that has been paid in full"

21. In his November 28, 2017 email to the Member, the Respondent made the following statement in respect of the Notice:

> "Following our conversation of yesterday I did a really deep thorough search of all of my personal files and folders and finally found the attached

> letter/notice signed by [LW] stating that the loan and interest totaling $5,000 was paid in full. This notice was tucked in the back of an adjacent file folder. I knew in the back of my mind that [LW] had signed some sort of proof of the full payment of the interest and loans and just had to find it."

22. The Member sent a copy of the Notice to the executor of the estate of LW who indicated that the purported signature of LW on the Notice was not LW's signature.

23. The estate of LW obtained an independent handwriting analysis of LW's signature which determined that the signature on the Notice was not LW's signature. The Member presented these findings to the Respondent, who then admitted to the Member that he had signed LW's signature on the Notice on or about November 28, 2017.

24. The Respondent's statement in the November 28, 2017 email to the Member above at paragraph 21 was false.

25. The Respondent stated that he was aware that LW had previously signed the December 21, 2006 Receipt stating that the receipt was "Payment in Full." However, the Respondent stated that, after not being able to locate the December 21, 2006 Receipt, he created the Notice in or about November 2017 in response to the Member's inquiry, signed LW's signature on the document, and provided it to the Member.

26. At the request of the Member, the Respondent subsequently offered to pay $1,745.97 to the estate of LW representing the interest owed to LW, and the cost of the handwriting analysis incurred by the estate of LW. The estate of LW declined the Respondent's offer of payment.

Additional Factors

27. As part of its investigation, the Member issued audit letters on November 22, 2017 to clients whose accounts the Respondent serviced which requested that the clients confirm whether there was any exchange of monies between the clients and the Respondent outside of their mutual fund investments. The Member did not receive any responses which indicated that the Respondent had engaged in personal financial dealings with other clients.

V. CONSIDERATIONS

Role of the Hearing Panel

28. Section 24.4.3 of MFDA By-Law No. 1 provides that Hearing Panels may only accept or reject a settlement agreement. A Hearing Panel has no authority to vary the terms that have been agreed to by the parties.

29. It is generally accepted that a Hearing Panel will not lightly interfere in a settlement agreement reached between Staff and a respondent, particularly when they are represented by experienced counsel, as in the current case. See for example, *Sterling Mutuals Inc. (Re),* LNCMFDA 16 at para. 37.

30. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily: whether it fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and previous MFDA cases; whether it would serve as a specific and general deterrent; and whether it would be consistent with the objectives of the MFDA to enhance investor protection and strengthen public confidence in the mutual fund industry.

Personal Financial Dealings

31. MFDA Rule 2.1.4 prescribes the duties of approved Persons when dealing with conflicts of interest. The relevant parts of that Rule are set out below:

> "(a) Each… Approved Person shall be aware of the possibility of conflicts of interest arising between the interest of the …Approved Person and the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.
> (b) In the event that such a conflict or potential conflict of interest arises,…the approved Person shall ensure that it is addressed by the exercise of responsible business judgement influenced only by the best interests of the clients and in compliance with Rules 2.1.4 (c) and (d).
> (c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4 (a) shall immediately be disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the …Approved Person proceeding with the proposed transaction."

32. In this case, as admitted by the Respondent, he engaged in personal financial dealings with LW when he and his wife obtained monies from LW pursuant to the Promissory Notes and, subsequent to LW becoming a client of the Member, made payments to LW of monies owing under the notes.

33. As a result, there was a conflict of interest between the Respondent and LW which, once LW became a client, the Respondent should have disclosed to the Member and ensured it was addressed by the exercise of responsible business judgement influenced only by the best interest of the client. We have found, as admitted by the Respondent, that his conduct, in failing to do so, was therefore contrary to MFDA Rule 2.1.4.

34. Under MFDA Rule 1.1.2, Approved Persons must comply with the MFDA Rules as they relate to the Member. Under MFDA Rule 2.5.1 each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the MFDA Rules.

35. The Member's policies and procedures prohibited Approved Persons from "engaging in personal financial dealings with clients."

36. We have found, as admitted by the Respondent, that by engaging in personal financial dealings with LW, he acted contrary to the Member's policies and procedures and MFDA Rule 1.1.2 (as it relates to MFDA Rule 2.5.1).

37. MFDA Rule 2.1.1 prescribes the standard of conduct required of registrants in the mutual fund industry. It requires that each Approved Person of a member shall; deal fairly, honestly and in good faith with its clients; observe high standards of ethics and conduct in the transaction of business; and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

38. We have found, as admitted by the Respondent, that he contravened MFDA Rule 2.1.1 by not disclosing the conflict of interest with his client to the Member and by contravening his Member's policies and procedures.

Misleading the Member and Signing Client's Signature on a Document Provided to the Member

39. While the Respondent's misconduct relating to engaging in personal financial dealings with his client was serious, what troubled us even more in this case was the fact that the Respondent misled his Member firm with respect to the subject loans.

40. We have found, as admitted by the Respondent, that by making false and misleading statements to the Member and submitting a document with a falsified signature to the Member, the Respondent contravened MFDA Rule 2.1.1.

41. We are of the view that such misconduct is very serious. It is critical to the integrity of the mutual fund industry that Approved Persons are truthful and forthcoming with their Member firms. When an Approved Person misleads his Member firm, it can impede the ability of the Member to properly supervise the Approved Person and protect the interests of the Member's clients.

Penalty

42. As noted above, the misconduct of the Respondent was serious.

43. The Respondent had only been registered for approximately a year when he borrowed funds from LW, but he had been registered for thirteen years when he misled the Member about those financial dealings and certainly ought to have then been aware that such conduct was improper and contrary to MFDA Rules.

44. We considered several mitigating factors in reaching our decision to accept the Settlement Agreement, including the following:

a) the Respondent repaid the principal of the loans, although some of the payments were made later than specified in the promissory notes;
b) the Respondent offered to reimburse the outstanding interest owed to LW and the costs of obtaining the handwriting analysis of LW's signature, but the estate declined to accept the offer of repayment;
c) the Respondent borrowed the monies from LW prior to LW becoming a client of the Respondent, although the indebtedness continued after LW became a client;

d) the amount that the Respondent borrowed from the client was relatively low;

e) in respect of the Respondent's misconduct, the Member imposed a 2 month suspension on the Respondent, which was completed in September 2017, and imposed a one year period of close supervision;

f) this appeared to be an isolated incident and the Respondent has not previously been the subject of MFDA disciplinary proceedings; and

g) by entering into the Settlement Agreement, the Respondent accepted responsibility for his actions and saved the MFDA the time, resources and expenses of a full hearing on the merits.

45. Staff referred us to two previous MFDA cases in which a respondent had engaged in personal financial dealings with a client, which the respondent did not disclose to the Member, and subsequently misled the Member with respect to the transaction. In the case of *Wang (Re),* 2017 LNCMFDA 209, the Hearing Panel accepted a settlement which provided for a six month prohibition, a fine of $20,000 and costs of $5,000. In the case of *Greenwood (Re),* 2018 LNCMFDA 31, the Hearing Panel imposed a fine of $5000, costs of $2500 and a requirement to complete an industry compliance course. In the latter case, it was noted that the respondent had been under great personal stress at the time when she borrowed the money from a longtime friend who was also a client.

46. The Hearing Panel reached its conclusion that engaging in personal financial dealings, exacerbated by making false statements to the Member and providing to the Member a document on which the Respondent had signed the client's signature, were serious breaches such that the agreed sanction was warranted and fell within a reasonable range of appropriateness, although in our view on the high side of the range.

47. In our opinion, it was important to impose a sanction that will act as a clear deterrent. The sanction in this case will send a clear message to other mutual fund participants that misconduct such as that engaged in by the Respondent will not be tolerated. In addition, the financial penalty and the requirement to take an industry course should ensure that the Respondent does not engage in similar misconduct in the future.

VI. CONCLUSION

48. We concluded that the agreed sanction fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and MFDA precedents. It should serve as both a specific and general deterrent. Further, we are of the view that it is consistent with the MFDA's mandate to protect investors and strengthen public confidence in the mutual fund industry. Accordingly, we decided it was appropriate to accept the Settlement Agreement.

DATED this 14th day of April, 2020.

"Joan Smart
Joan Smart
Chair

"Linda J. Anderson"
Linda J. Anderson
Industry Representative

"Jeff Page"
Jeff Page
Industry Representative

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