



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: Patrick Cronin

Heard: January 16, 2015, in Toronto, Ontario
Reasons for Decision: January 19, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Guenther W.K. Kleberg	Industry Representative
T. Hugh McNabney	Industry Representative

Appearances:

Charles A. Toth)	For the Mutual Fund Dealers Association of
)	Canada
)	
Gordon D. Cudmore)	For the Respondent, who did not appear at the
)	hearing
)	

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 Friday, January 16, 2015. The full Settlement Agreement entered into between Staff of the MFDA and Patrick Cronin (“Mr. Cronin” or the “Respondent”) is available on the MFDA website and will not be set out in detail here. The Respondent did not appear at the settlement hearing, but was represented by counsel.

2. Proceedings against the Respondent had been commenced by a Notice of Hearing dated May 22, 2014. Two violations of the By-laws, Rules or Policies of the MFDA were alleged.

3. Allegation #1 was that: “Between January 11, 2002 and November 8, 2011, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the two Members with which he was registered in succession by arranging private loans and mortgages for third party borrowers and lenders, which included borrowing from clients, contrary to MFDA Rules 1.2.1(c) and 2.1.1.”

4. MFDA Rule 1.2.1(c) [formerly rule 1.2.1(d)] relates to “dual occupations”, which are permitted if, amongst other requirements, the “Member for which the Approved Person carries on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation.” The rule also provides that if the Member approves, the Member must establish and maintain “procedures to ensure continuous service to clients and to address potential conflicts of interest.” Unless the Member is aware of the activity, it cannot monitor it.

5. Rule 2.1.1 states, in part, that 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;

6. A second allegation involved a specific client from whom the Respondent borrowed money. As part of the Settlement Agreement, this allegation was dropped.

7. Mr. Cronin had been registered as a mutual fund salesperson from February 1997 to November 14, 2006 with Clarica Investco Inc. Clarica terminated the Respondent's employment after it learned he was engaging in undisclosed outside business activity with respect to arranging private loans and mortgages. From November 29, 2006 to November 8, 2011, Mr. Cronin was registered as a mutual fund salesperson with Desjardins Financial Security Investments Inc., which terminated his employment as a result of failure to disclose his outside business activities.

8. The Respondent, who is now 47 years old, conducted his business in and around Dublin, Ontario, located near Stratford, Ontario. He is not currently registered in the securities industry in any capacity. He is, however, currently licensed by the Financial Services Commission of Ontario as an insurance agent and mortgage broker. He took out a license as a mortgage broker in 2008 but told Desjardins that it was to "administer family holdings of a real estate company." He did not tell Desjardins about his other activities involving mortgages or even that he was a licensed mortgage agent.

9. On January 14, 2015, the panel was advised that the parties were very close to a settlement, which, if agreed to by the parties, would convert the hearing into a settlement hearing that was to take place on January 16th. Normally ten days notice is required before a settlement hearing can take place. We were asked by the parties, and agreed to do so, to waive the notice requirement in that the public was aware that some form of a hearing against the Respondent would take place on January 16th.

10. We approved the settlement at the January 16, 2015 hearing.

TERMS OF SETTLEMENT

11. Mr. Cronin admits in the Settlement Agreement that he engaged in the conduct alleged in Allegation #1. Paragraph 36 of the agreement states:

“The Respondent admits that, between January 11, 2002 and November 8, 2011, he had and continued in another gainful occupation that was not disclosed to and approved by the two Members with which he was registered in succession by arranging private loans and mortgages for third party borrowers and lenders, some of whom were clients, contrary to MFDA Rules 1.2.1(c) [formerly MFDA Rule 1.2.1(d)] and 2.1.1.

12. He also agreed (paragraph 37) to the following terms of settlement:

- a) the Respondent shall, for a period of ten (10) years, be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 upon acceptance of this Settlement Agreement;
- c) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 upon acceptance of this Settlement Agreement; and
- d) the Respondent shall in the future comply with MFDA Rules 1.2.1(c) and 2.1.1.

APPROVAL OF SETTLEMENT

13. The panel approved the terms of the Settlement Agreement. We found that the proposed penalties were reasonable and proportionate having regard to the conduct of the Respondent and the circumstances of this case. Further, by entering into a Settlement Agreement he has accepted responsibility for his misconduct and recognizes its seriousness.

14. The Respondent has never been the subject of a disciplinary proceeding by the MFDA and cooperated with Staff during its investigation into his conduct. By entering into the

agreement, the Respondent saved the MFDA the time, resources and expense associated with conducting a full hearing of the allegations.

15. The penalty is appropriate and is in line with other approved settlements in similar cases that were cited by counsel. See, for example, *Re Rathore*, May 31, 2005, File No. 200504; *Re Chiang*, February 6, 2012, File No. 201105; and *Re Hunt*, July 18, 2014, File No. 201342. A ten-year prohibition is a serious penalty for a serious offence. It is certainly within the reasonable range of appropriateness. In such cases, a panel should be careful not to interfere with the agreement. Settlements can either be accepted or rejected. They cannot be modified by a panel.

16. As a recent panel stated (*Re Menashe Keshet*, September 3, 2014, File No. 201419) “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.”

17. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

“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.”

18. For the above reasons we approved the Settlement Agreement.

DATED this 19th day of January, 2015.

“Martin L. Friedland”

Martin L. Friedland, C.C., Q.C.
Chair

“Guenther W.K. Kleberg”

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