



**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: James Edward Curtis**

Heard: November 15, 2017 in Toronto, Ontario

Decision: November 15, 2017

Reasons for Decision: December 7, 2017

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

W. A. Derry Millar

Casimir Litwin

Colleen Waring

Chair

Industry Representative

Industry Representative

Appearances:

Lyla Simon

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Counsel for the Mutual Fund Dealers

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Association of Canada

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A. Benson Forrest

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Counsel for the Respondent

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James Edward Curtis

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Respondent, by teleconference

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## INTRODUCTION

1. By Notice of Hearing dated October 11, 2016,<sup>1</sup> and an Amended Notice of Hearing dated March 15, 2017,<sup>2</sup> Staff of the Mutual Fund Dealers Association of Canada (“MFDA”) alleged that James Edward Curtis (“Respondent”) violated the By-laws, Rules or Policies of the MFDA set out below:

**Allegation #1:** Between about January and April 2014, the Respondent failed to follow a series of compliance directives from the Member requiring the Respondent to reassess the suitability of his recommendations to clients to hold 100% of their investments in a single precious metal sector fund and, where appropriate, make recommendations to reduce the clients’ concentration in the fund, contrary to MFDA Rules 2.2.1 and 2.1.1.

**Allegation #2:** Between about January and April 2014, the Respondent arranged for at least 75 clients to complete updated Know-Your-Client (“KYC”) forms which increased the clients’ risk tolerance, in order to ensure that the clients’ KYC information matched his recommendations to hold 100% of their investments in a single precious metal sector fund, contrary to MFDA Rules 2.2.1 and 2.1.1.

2. The Respondent entered into a settlement agreement with Staff of the MFDA dated October 11, 2017 (“Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to s. 24.1 of By-law No. 1.

3. The Respondent appeared by counsel at the First Appearance before the Chair of the Hearing Panel on January 26, 2017, at which time the Notice of Hearing dated October 11, 2016 was marked Exhibit 1, the Affidavit of Service of Sofi Vasiliadis dated November 22, 2016 deposing to service of the Notice of Hearing on the Respondent was marked Exhibit 2, and the Respondent’s Reply dated December 16, 2016 was marked Exhibit 3. The Respondent appeared

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 4.

by counsel at a further appearance before the Chair of the Hearing Panel held on February 9, 2017.

4. On January 26, 2017, the Hearing on the Merits was fixed by the Chair of the Hearing Panel at the First Appearance for October 16, 17, 18, 19 and 20, 2017. As a result of the Settlement Agreement reached between Staff and the Respondent, the Hearing on the Merits did not proceed on October 20, 2017, and the Hearing Panel convened on November 15, 2017 to consider whether, pursuant to section 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept the Settlement Agreement.

5. The Respondent attended the Settlement Hearing by teleconference and his counsel attended in person. At the Settlement Hearing, the Amended Notice of Hearing dated March 15, 2017 was marked Exhibit 4, the Amended Reply dated December 16, 2016 and amended on April 13, 2017 was marked Exhibit 5, and the Settlement Agreement was marked Exhibit 6.

6. At the commencement of the Hearing, the Panel granted a joint request by Staff Enforcement Counsel and counsel for the Respondent to move the proceedings “in camera”. In accordance with Rule 15.2(3), upon acceptance of the Settlement Agreement, the Panel “shall provide reasons for its decision which, along with the record of the settlement hearing, shall be made available to the public.”

7. Prior to the commencement of the Settlement Hearing, the Panel reviewed the Settlement Agreement, the Submissions of Staff of the MFDA and the Staff’s Book of Authorities. After considering the submissions of counsel, the Panel announced that it accepted the Settlement Agreement and signed the Order agreed to by the parties. These are the Panel’s reasons for accepting the Settlement Agreement. Accordingly, our reasons and the record of the settlement hearing shall be made available to the public. Attached to these reasons as Schedule “1” is a copy of the Settlement Agreement<sup>3</sup> and the Order.

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<sup>3</sup> Exhibit 6.

## **AGREED STATEMENT OF FACTS - TERMS OF SETTLEMENT**

8. The parties have agreed on the facts for the purposes of this proceeding. The agreed statement of facts is set out in the Settlement Agreement. Set out below are extracts from the Settlement Agreement:

### **II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to section 24.1 of MFDA By-law No. 1.

4. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "A".

5. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule "A", will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

### **III. ACKNOWLEDGEMENT**

6. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part XI) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration History**

7. From October 1997 to October 2016, the Respondent was registered in Ontario as a dealing representative (previously referred to as a mutual fund salesperson) with IPC Investment Corporation ("IPC"), a Member of the MFDA.

8. Prior to being registered with IPC, the Respondent was registered from January 1995 to February 1996 as a mutual fund salesperson with PFSL Investments Canada Ltd.

9. At all material times, the Respondent carried on business from a sub-branch located in Waterloo, Ontario.

10. At all material times, the Respondent was also licensed to sell insurance.

### **Complaint by Client ER**

11. In or about June 2010, the Respondent became the mutual fund salesperson at IPC responsible for servicing the mutual fund accounts of client ER. Client ER's initial investments were comprised of a transfer of her retirement pension savings to IPC and totaled approximately \$200,929.

12. Client ER was retired at the time of the investments and, according to the New Account Application Forms completed at the time of client ER's accounts being opened, lived on a fixed income, had a limited net worth, "novice" investment knowledge, and was seeking diversified risk in her portfolio.

13. On or about November 8, 2010, the Respondent invested 100% of client ER's investments in the Dynamic Strategic Gold Class fund (the "Gold Fund"), a fund that was at the time identified in its prospectus as "moderate risk".

14. On or about November 30, 2010, client ER invested an additional \$50,000 with the Respondent, who invested 100% of the monies in the Gold Fund.

15. In the period subsequent to her initial investments, client ER experienced significant losses in her accounts.

16. In or about June 2013, client ER complained to IPC that, among other things, the investments recommended by the Respondent were not suitable for her.

17. In or about September 2013, IPC paid client ER the amount of \$119,787.

### **Complaint by Clients HM & WM**

18. In or about February 2006, the Respondent became the mutual fund salesperson at IPC responsible for servicing the mutual fund accounts of clients HM and WM, spouses of one another. Clients HM and WM's initial investments were comprised of a transfer of their retirement savings to IPC.

19. In or about June 2010, the Respondent invested 100% of clients HM and WM's investments (approximately \$206,362) in the Gold Fund.

20. At the time the Respondent invested clients HM and WM's investments in the Gold Fund, they were both 83 years old, retired, lived on a fixed income, and had limited investment knowledge.

21. In the period subsequent to investing in the Gold Fund, clients HM and WM experienced significant losses in their accounts.

22. In or about June 2016, clients HM and WM complained to IPC that, among other things, the investments recommended by the Respondent were not suitable for them.

23. In or about October 2016, IPC paid clients HM & WM the amount of \$62,094.

### **Complaint by Client BM**

24. In or about 1997, the Respondent started servicing the mutual fund accounts of client BM. Client BM's initial investments were comprised of a transfer of his retirement savings to IPC.

25. In or about May 2010, the Respondent invested approximately 99% of client BM's investments (approximately \$275,539) in the Gold Fund.

26. At the time the Respondent invested client BM's investments in the Gold Fund, he had limited investment knowledge and experience.

27. In the period subsequent to investing in the Gold Fund, client BM experienced significant losses in his accounts.

28. In or about May 2017, client BM complained to IPC that, among other things, the investments recommended by the Respondent were not suitable for him.

29. In or about September 2017, IPC paid client BM the amount of \$177,567.

### **IPC's Termination of the Respondent**

30. On November 11, 2013, IPC issued a termination letter to the Respondent, with an effective termination date of January 10, 2014. The termination letter advised that the termination was due to IPC's investigation of the complaint of client ER, the Respondent's extensive use of precious metals investment products within his clients' portfolios, and the Respondent's views not aligning with IPC's as to how best to manage client assets.

### **Change to Gold Fund Risk Rating**

31. On or about December 5, 2013, Dynamic Funds (the mutual fund manufacturer) changed the risk rating of the Gold Fund from “medium” to “medium-to-high”.

### **IPC’s Rescission of the Respondent’s Termination**

32. In or about early January 2014, the Respondent requested that IPC rescind his termination. After discussions with the Respondent, IPC agreed to rescind the Respondent’s termination.

### **The Respondent Fails to Follow IPC’s Directives**

33. In or about early January 2014, IPC directed the Respondent to send a letter to 96 of his clients who were heavily concentrated in the Gold Fund (“the Letter”). The Letter was drafted by IPC but identified the Respondent as the author/sender. The Letter advised clients that:

- i. the Gold Fund had changed its risk rating from “medium” to “medium-to-high”;
- ii. there were concentration issues in the client’s accounts; and
- ii. the Respondent was seeking a meeting with the client to review and diversify the client’s account holdings.

34. IPC directed the Respondent to review each client’s account, and where necessary, make recommendations to reduce the client’s concentration in the Gold Fund. IPC sought the Respondent’s confirmation that he would follow this approach.

35. On or about January 10, 2014, the Respondent advised IPC that he had “many concerns” with the Letter, and that, in opposition to what IPC was directing, he was only willing to meet with his clients to adjust their risk tolerance on KYC forms to reflect the risk rating change in the Gold Fund.

36. On or about January 10, 2014, IPC directed the Respondent to confirm that he would, where necessary, make recommendations to clients to redeem the Gold Fund as part of a rebalancing exercise to reduce the concentration in their accounts.

37. On or about January 10, 2014, in opposition to what IPC was directing, the Respondent advised that if a client had questions or concerns regarding their current portfolio position, he would make recommendations “away from gold”.

38. On or about January 15, 2014, IPC sent the Letter to the Respondent’s clients.

39. In the months that followed, the Respondent met with 82 of the 96 clients who received the Letter, and advised his clients that:

- i. selling the Gold Fund would result in a deemed disposition; and
- ii. in order to maintain their current concentration in the Gold Fund, they would have to complete an updated KYC form increasing their risk tolerance from “medium” to “medium-to-high”.

40. The Respondent failed to present the risks of holding investments concentrated in the Gold Fund in a fair and balanced manner.

41. Rather than reassess the suitability of recommendations to clients to be invested solely in the Gold Fund and, where appropriate, make recommendations to reduce the clients’ concentration in the Gold Fund, the Respondent arranged for at least 75 of the 82 clients he met with to complete updated KYC forms which increased the clients’ risk tolerance from “medium” to “medium-to-high”. The Respondent engaged in this activity to ensure that the clients’ KYC information matched his investment recommendations, without assessing the essential KYC factors relevant to each individual client.

42. Notwithstanding the directive provided by the Member, the Respondent adjusted the investment portfolios for only 3 of the 82 clients he met following the delivery of the Letter.

43. On October 7, 2016, IPC terminated the Respondent.

## **V. THE RESPONDENT’S POSITION**

44. The Respondent resides in Waterloo, Ontario and is 51 years old.

45. The Respondent has been diagnosed with multiple sclerosis and uses a motorized wheelchair. His physical condition is progressively worsening.

46. The Respondent states that he is impecunious, and is receiving disability benefits in the approximate amount of \$800 per month. He had his house sold by the bank, and is living in an apartment he shares with another individual.

47. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

48. The Respondent has cooperated with MFDA Staff throughout the investigation and the disciplinary proceedings.

## **VI. CONTRAVENTIONS**

49. The Respondent admits that:
- i. between about January and April 2014, the Respondent failed to follow a series of compliance directives from the Member requiring the Respondent to reassess the suitability of his recommendations to clients to hold 100% of their investments in a single precious metal sector fund and, where appropriate, make recommendations to reduce the clients' concentration in the fund, contrary to MFDA Rules 2.2.1 and 2.1.1; and
  - ii. between about January and April 2014, the Respondent arranged for at least 75 clients to complete updated Know-Your-Client forms which increased the clients' risk tolerance, in order to ensure that the clients' Know-Your-Client information matched his recommendations to hold 100% of their investments in a single precious metal sector fund, contrary to MFDA Rules 2.2.1 and 2.1.1.

## **VII. TERMS OF SETTLEMENT**

50. The Respondent agrees to the following terms of settlement:
- i. the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and
  - ii. the Respondent shall attend via teleconference on the date scheduled for the MFDA settlement hearing.

## **REASONS FOR DECISION**

9. Staff of the MFDA submitted that the acceptance of the Settlement Agreement would advance the public interest as the Respondent has admitted to his misconduct and the proposed penalties are reasonable and proportionate, having regard to the nature and extent of the Respondent's misconduct and all of the circumstances.

10. Prior to accepting a Settlement Agreement, we must be satisfied that:

- a) the facts admitted to by the Respondent constitute misconduct in contravention of the By-law, MFDA Rules or Policies or provincial securities the legislation; and
- b) the penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all of the circumstances.

11. We agree with Staff's submissions that:

- a) in considering a settlement, a hearing panel's duty is not to decide whether it would have arrived at the same decision as the outcome agreed upon by the parties in the settlement agreement. Rather, the task is to determine whether the penalty is a reasonable one and whether it meets the objectives of the disciplinary process, that is, protection of the public and maintaining the integrity of the securities industry;<sup>4</sup>
- b) settlements advance the objective of protecting the public by proscribing activities that are harmful to the public and enabling the parties to reach a flexible remedy that is tailored to address the interests of both the regulator and the Respondent;<sup>5</sup> and
- c) When determining whether it would be appropriate to accept a proposed settlement, MFDA hearing panels typically take into consideration whether the settlement:
  - i. would be in the public interest and whether the penalty imposed will protect investors;
  - ii. is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
  - iii. addresses the issues of both specific and general deterrence;

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<sup>4</sup> *Equity Associates Inc. (Re)*, 2015 LNCMFDA 56, Decision of the Central Regional Council dated May 27, 2015 at para. 15. See also: *Vorstadt (Re)*, 2012 LNIROC 15, Decision of the Ontario District Council dated March 20, 2012 at para. 8.

<sup>5</sup> *Equity Associates* at para. 17.

- iv. will prevent the type of conduct described in the Settlement Agreement from occurring again in the future; and
- v. will foster confidence in the integrity of the Canadian capital markets and the MFDA, and in the regulatory process itself.<sup>6</sup>

12. With respect to penalty, we agree that hearing panels have taken into account the following factors when evaluating whether the penalties proposed should be accepted:

- a) the seriousness of the contraventions admitted to by the Respondent;
- b) the Respondent's past conduct, experience in the capital markets and disciplinary history;
- c) whether the Respondent recognizes that the conduct was improper and has demonstrated remorse;
- d) the harm suffered by investors as a result of the Respondent's conduct;
- e) whether the settlement agreement addresses both specific and general deterrence and will tend to prevent both the Respondent and others who participate in the capital markets from engaging in similar improper activity in the future;
- f) whether acceptance of the settlement agreement would be in the public interest as the penalties agreed upon will protect investors and are reasonable and proportionate having regard to the conduct of the Respondent;
- g) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process; and
- h) previous decisions in similar circumstances.<sup>7</sup>

13. The MFDA Penalty Guidelines provide an additional source of factors that may be taken into account with regards to penalty.

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<sup>6</sup> *Sterling Mutuals Inc.* (Re), 2016 LNCMFDA 77, Decision of the Central Regional Council dated June 27, 2016 at para. 13.

<sup>7</sup> *Sterling Mutuals* at para. 14.

14. The jurisprudence directs that a Hearing Panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness having regard to the conduct of the Respondent.

15. Staff submitted that the Panel should consider the following in relation to the penalty in the circumstances of this case:

- a) ***Past Conduct, Experience & Disciplinary History:*** The Respondent is 51 years old, has been registered in the financial services industry since the mid-90s, and has not been the subject of previous MFDA disciplinary proceedings.
- b) ***Seriousness of the Contraventions:*** The contraventions that the Respondent has admitted to are serious, and the matter is appropriately the subject matter of a disciplinary proceeding. As noted earlier in these submissions, following a Member's directives, and upholding one's duty to know each client, are both essential components to protecting investors. Any failure to comply with these obligations is a serious matter.
- c) ***Number of Affected Clients and Client Harm:*** The Respondent's conduct involved a large number of clients. The Member has responded to client complaints and reimbursed four clients a total of approximately \$359,448.
- d) ***Remorse:*** Staff is satisfied that the Respondent has demonstrated remorse, accepted responsibility for his conduct, and regrets the contraventions. The Respondent co-operated with Staff and entered into the Settlement Agreement, thus reducing the length and complexity of the disciplinary proceeding that might have otherwise been necessary.
- e) ***Factors Unique to this Matter:*** The Respondent has been diagnosed with multiple sclerosis and uses a motorized wheelchair. His physical condition is progressively worsening. The Respondent states that he is impecunious, and is receiving disability benefits in the approximate amount of \$800 per month. He had his house sold by the bank, and is living in an apartment he shares with another individual.

- f) ***Deterrence***: Both general and specific deterrence are of importance to Staff and to the securities industry more widely. Staff submitted that if the Settlement Agreement is accepted, the penalty will serve as a general caution and deterrent to the industry regarding potential outcomes for engaging in such misconduct.
- g) ***Public Interest & Proportionality***: It is submitted that it would be in the public interest to accept the Settlement Agreement. The Settlement Agreement is the result of substantial negotiations between the parties and conveys that the Respondent's misconduct constituted a serious regulatory contravention, resulting in a significant penalty.
- h) ***Previous Decisions***: Staff provided the penalties imposed in a series of previous decisions for the Hearing Panel to consider.

16. Staff advised the Panel that the Respondent's difficult personal circumstances were of foremost concern to Staff in relation to the proposed penalty.

17. The Respondent agreed with the submissions of Staff. The Respondent submitted that the settlement should be approved.

18. We agree and find that the facts admitted to by the Respondent constitute misconduct in contravention of MFDA Rules 2.2.1 and 2.1.1. We also agree that the Settlement Agreement meets the objectives of the MFDA By-laws, Rules and Policies, and is in the public interest.

19. A permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member is the ultimate sanction that can be imposed by the Panel. We accept that it is an appropriate penalty in the circumstances of this case. We are also in agreement that the Respondent's personal circumstances including his illness and his limited disability income make the imposition of a financial penalty or costs would not be appropriate in this case.

20. Accordingly, we accepted the Settlement Agreement and signed the Order presented to us at the Hearing which provided for the following penalty:<sup>8</sup>

The Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.

**DATED** this 7<sup>th</sup> day of December, 2017.

“W. A. Derry Millar”

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W. A. Derry Millar  
Chair

“Casimir Litwin”

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Casimir Litwin  
Industry Representative

“Colleen Waring”

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Colleen Waring  
Industry Representative

DM 587055

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<sup>8</sup> The Order also provides: If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.