



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: Nathan Hersh Disenhouse

Heard: June 18, 2010 in Toronto, Ontario
Reasons for Decision: July 8, 2010

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John W. Morden
Robert C. White
Selwyn Kossuth

Chair
Industry Representative
Industry Representative

Appearances:

Lyla Simon)	For the Mutual Fund Dealers Association of
)	Canada
Michael Meredith)	For the Respondent
)	
Nathan H. Disenhouse)	In Person
)	

Introduction and Overview

1. By Notice of Hearing, dated December 17, 2009, amended on April 29, 2010, the Mutual Fund Dealers Association of Canada (“MFDA”) made the following allegations against Nathan Hersh Disenhouse (the “Respondent”):

Allegation #1: Between October 2004 and October 2005, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring or facilitating the sale of an investment product that was not approved for sale by the Member to 18 individuals, 11 of whom were clients, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

Allegation #2: Between October 2004 and October 2005, the Respondent engaged in a dual occupation that was not disclosed to and approved by the Member by selling, referring or facilitating the sale of an investment product to 18 individuals, 11 of whom were clients, contrary to MFDA Rules 1.2.1(d), 2.4.2 and 2.1.1.

Allegation #3: Between October 2004 and October 2005, the Respondent failed to disclose to investors in the above-noted investment product that he had an interest in the company offering the investment product, thereby placing his own interests above those of the investors and giving rise to an actual or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the investors, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #4: Between 2005 and 2008, the Respondent engaged in a dual occupation that was not disclosed to and approved by the Member by entering into a referral agreement and referring clients to a third party that administered pension plans, contrary to MFDA Rules 1.2.1(d), 2.4.2 and 2.1.1.

Allegation #5: Between February 2006 and 2008, the Respondent obtained and maintained blank, pre-signed trading forms in client files and used such forms to process a trade in at least one client account, thereby:

- (i) failing to comply with the Member's express directions that he obtain original client signatures on trading authorization forms, contrary to MFDA Rules 1.1.2 and 2.5.1; and
- (ii) failing to observe high standards of ethics and engaging in business conduct or practice that was unbecoming, contrary to MFDA Rule 2.1.1.

2. The matter came before this panel on June 8, 2010 at which time Ms. Simon appeared on behalf of the MFDA and no one appeared on behalf of the Respondent. The Staff was in communication with Michael Meredith, counsel for the Respondent, and at that time it was agreed that the matter would be adjourned to June 18, 2010 for hearing.

3. By Notice of Settlement Hearing dated June 17, 2010 given by the MFDA, a hearing was convened on June 18, 2010 in Toronto, Ontario, to consider, whether, pursuant to Section 24.4 of MFDA By-law No.1, the Hearing Panel should accept the settlement agreement ("Settlement Agreement") entered into between Staff of the MFDA and the Respondent on June 16, 2010.

4. Staff advised the Hearing Panel at the hearing on June 18, 2010 that the Settlement Agreement had been prepared in accordance with Section 24.4 of By-law No. 1 and that the Notice of Settlement Hearing had been prepared and published in accordance with Rule 15.2(1) of MFDA Rules of Procedure, with the exception of the 10-day notice provision referred to in the rule.

5. A joint motion was then brought for an order abridging the time requirement relying upon Rules 1.3(1), 1.5(1)(b) and 2.2 of the Rules of Procedure. The Panel made the order as requested to make the notice effective with respect to the June 18, 2010 hearing. Precedent for this is afforded by *Re Ben Alden Kaley*, January 23, 2010, MFDA Atlantic Regional Council, File No. 200923.

6. We also, made an order on the consent of Staff and the Respondent to move the proceeding "*in camera*" under Rule 15.2(2) of the Rules of Procedure.

7. We made this order on the condition, which was agreeable to both Staff and the

Respondent, that should the Hearing Panel accept the Settlement Agreement, we would provide reasons for our decision which, along with the record of the Settlement Hearing, would be available to the public. This is consistent with Rule 15.2(3) of the Rules of Procedure.

8. We then considered the provisions of the Settlement Agreement. After having read the Submissions of Staff of the MFDA and hearing submissions from Ms. Simon and Mr. Meredith on the applicable law and why the Settlement Agreement met the appropriate criteria, we retired to consider whether we should accept the Settlement Agreement. After consideration, we unanimously accepted the Settlement Agreement and made an order to this effect on June 18, 2010. We advised that our reasons would follow.

THE SETTLEMENT AGREEMENT

9. The material provisions in the Settlement Agreement are as follows:

Agreed Facts

Registration History

- (1) From December 1, 1998 to June 27, 2008, the Respondent was registered in Alberta and Ontario as a mutual fund salesperson and branch manager with IPC Investment Corporation (“IPC”). The Respondent’s branch was located in Toronto, Ontario.
- (2) The Respondent was previously registered in Alberta and Ontario as follows:
 - (i) February 1994 to December 1998: as a mutual fund salesperson and branch manager with Multi Mutual Inc.; and
 - (ii) October 1990 to February 1994: as a mutual fund salesperson with Counsel Financial Service.
- (3) IPC became a Member of the MFDA on March 8, 2002.

- (4) On June 20, 2008, Mr. Disenhouse terminated his relationship with IPC, effective June 27, 2008. On June 27, 2008, IPC terminated the Respondent's registration.
- (5) At the material time and currently, the Respondent was licensed to sell life insurance. His managing general agent was and is PanFinancial Insurance Agencies Ltd.
- (6) The Respondent is 51 years old, and is not currently registered in the securities industry in any capacity.
- (7) The Respondent has no prior disciplinary history with the MFDA.

The Maypoint Debentures

- (8) Maypoint Investments Inc. ("Maypoint") is an Ontario company incorporated on July 14, 2004.
- (9) At the material time, Maypoint purportedly carried on business raising funds through the sale of debentures ("Maypoint debentures") to investors. The Maypoint debentures were for a term of approximately one year, required a minimum investment of \$25,000, and promised to pay investors 14% annually.
- (10) The Maypoint debentures were sold by way of an offering memorandum in reliance upon the exemptions from the prospectus and registration requirements in the *Securities Act* (Ontario).
- (11) The proceeds from the sale of the Maypoint debentures were purportedly invested by Maypoint in the secured notes of an entity known as GTA Financial Inc. ("GTA"), which in turn purportedly used the proceeds to advance consumer loans to individuals to finance the purchase of used vehicles. GTA filed for bankruptcy on June 9, 2006.

- (12) The Maypoint debentures were sold to investors in Ontario through a limited market dealer, including PanFin Equicap Ltd.
- (13) In September 2004, the Respondent met with a principal of Maypoint and learned of the Maypoint investment. The Respondent then attended a Maypoint presentation, learned further details about the Maypoint investment, and received documentation including a detailed Term Sheet, Subscription Agreement with attached Accredited Investor form and a Client Acknowledgement form.
- (14) On September 15, 2004, the Respondent personally invested \$30,000 in Maypoint debenture. Mr. Disenhouse purchased his Maypoint debenture pursuant to the same Offering Memorandum and disclosure documentation as all other investors. His \$30,000 investment in Maypoint reflected his belief that it was a viable investment, and suitable for qualified investors.
- (15) As is set out in the chart below, over a period of approximately one year, between October 8, 2004 and October 1, 2005, the Respondent sold, referred or facilitated the sale of a total of \$730,000 of the Maypoint debentures to 18 investors. Of the 18 investors (some of whom invested jointly), 11 were clients of IPC.

	Investor	Transaction Date	Investment Amount
	(Nathan Disenhouse)	September 15, 2004	\$30,000)
1.	Client JW	October 8, 2004	\$25,000
2.	Client AL	October 12, 2004	\$25,000
3.	DP	October 29, 2004	\$25,000
4.	Client TL	November 9, 2004	\$50,000
5.	FE	November 25, 2004	\$25,000
6.	Clients MC & FC	January 4, 2005	\$50,000
7.	AP & FP	January 4, 2005	\$25,000
8.	Client RG	January 24, 2005	\$25,000
9.	Client SM	January 26, 2005	\$50,000
10.	Client MC	January 27, 2005	\$25,000
11.	CF & HK	February 18, 2005	\$25,000

	Investor	Transaction Date	Investment Amount
12.	HK	February 18, 2005	\$25,000
13.	Client RT	February 18, 2005	\$100,000
14.	EP	March 4, 2005	\$25,000
	Client TL (renewal)	May 4, 2005	\$50,000
	Client AL (renewal)	June 17, 2005	\$25,000
15.	Client JC	July 14, 2005	\$50,000
16.	JJ & EJ	July 14, 2005	\$30,000
17.	Clients WK & ZK	August 29, 2005	\$50,000
18.	Client IK & JK	October 1, 2005	\$25,000
		Total Invested	\$730,000

- (16) The Respondent entered into a written referral agreement regarding his Maypoint activities. The Respondent states that he believes he could enter into the referral agreement pursuant to his insurance registration. Maypoint documentation identified the “Agent” (Mr. Disenhouse’s company PanFinancial Investments Inc.) as a licensed Life Insurance Agent in Ontario, thus reflecting Mr. Disenhouse’s belief.
- (17) The Respondent received referral fees for each investment made in the Maypoint debentures, including his own. In total, he earned \$8,320 in commissions or referral fees.
- (18) At not time did the Respondent disclose to seek approval from IPC to engage in the activity described above with respect to Maypoint.
- (19) IPC was not aware that the Respondent was involved in the sale or referral of the Maypoint debentures. Neither the sales or referrals of the Maypoint debentures nor the resulting commissions or referral fees received by the Respondent were carried on for the account of, or through the facilities of, the Member.
- (20) Maypoint remains incorporated but the Maypoint but the debentures have not paid interest or returned invested capital to investors since 2007, and there is no prospect of it doing so. However, Maypoint debenture holders are the beneficiaries of a

general security agreement over the assets of GTA. Following GTA's bankruptcy in June 2006, GTA's assets, including a portfolio of consumer loans, were purchased by SourceOne Capital Financial Services Inc. ("SourceOne"). Those assets are now being administered by SourceOne. Maypoint investors have not, to date, recovered any amounts through this process.

Conflict of Interest

- (21) Between October 2004 and October 2005, the Respondent was a shareholder in Glenside Holdings Inc. ("Glenside"), a corporation which was, in turn, the sole shareholder of Maypoint.
- (22) The Respondent advised Maypoint investors that he was, like them, an investor in Maypoint, but he did not at any time disclose to them that he had an ownership interest in Maypoint by virtue of the fact that he was a Glenside shareholder.
- (23) The Respondent did not at any time disclose to IPC that he was a shareholder of Glenside, nor did he disclose to IPC the existence of Glenside, or Glenside's relationship to Maypoint.

Referrals to Gilles R. Marceau & Associates Inc.

- (24) On March 7, 2005, the Respondent entered into a referral agreement with Gilles R. Marceau and Associates ("GMA") ("Referral Agreement"), a pension plan consulting firm that establishes and administers pension plans for its clients. The Respondent managed the pension plan assets once the plan was established by GMA.
- (25) Each GMA client paid an annual fee of \$1,500 for the pension plan services. Pursuant to the terms of the Referral Agreement, 50% of the annual fee was paid to the Respondent. Clients were advised of this payment arrangement in writing.
- (26) The Respondent referred three IPC corporate clients to GMA: PC Inc., AGDP

Inc., and BBHP, and was paid a total of \$3,750 in referral fees.

- (27) The Respondent's referrals to GMA started in 2005; however, the respondent did not disclose to or seek approval from IPC for his GMA activities. IPC learned of the Respondent's GMA activities on or about November 12, 2007, during a review of the branch for which the Respondent was Branch Manager.

Pre-signed Forms

- (28) On February 3, 2006, IPC conducted a branch review of the branch for which the Respondent was the Branch Manager ("Respondent's Branch"), wherein it was found that:

- (i) In the sample of 29 client files for which the Respondent was the mutual fund salesperson responsible for the account, certain of the files showed trades that had been processed in the client accounts, but none of the client files contained trading authorizations forms that displayed original client signatures; and
- (ii) Two client files contained blank, signed mutual fund trading documents with no trading instructions or date completed.

- (29) On May 2, 2006, as a result of the findings of the IPC branch review, IPC placed the respondent on strict supervision, reduced his commissions, and instructed him to obtain specific client instructions and maintain adequate records of each trade order and instruction. IPC assigned the Respondent's Branch a high risk ranking. IPC reminded the Respondent of the requirement to obtain client signatures on IPC order entry forms and letters of direction concerning trading activity in client accounts. The Respondent was subsequently able to satisfy IPC that the clients had approved the trades in question.

- (30) On August 29, 2006, IPC conducted a follow-up review of the Respondent's branch. IPC reduced the high risk ranking assigned to the branch. Effective

September 1, 2006, the Respondent's strict supervision was removed and his commissions reinstated.

- (31) On November 12, 2007, IPC conducted a review of the Respondent's Branch, wherein it was noted that in a review of client files for which the Respondent was the mutual fund salesperson responsible for the account:
- (i) One client file did not contain evidence of client trade authorization; and
 - (ii) One client file contained evidence that the Respondent had used a photocopy of a blank, signed order entry form to process a trade in a client's account
- (32) Subsequent to the November 12, 2007 review of the Respondent's Branch, IPC found that another of the Respondent's client's files, belonging to client BA ("BA"), contained an IPC order entry form, and a financial account change form, each of which contained BA's signature but no trade instructions.
- (33) On April 15, 2008, IPC again placed the Respondent on strict supervision and reduced his commissions. The Respondent's Branch was assigned a high risk ranking.
- (34) On April 22, 2008, the Respondent signed an Acknowledgment issued by IPC regarding the prohibition on discretionary trading and pre-signed forms, and confirming the Respondent's agreement not to engage in such practices in future.

CONTRAVENTIONS

- (35) The Respondent admits that:
- (i) Between October 2004 and October 2005, he engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring, or facilitating the sale of \$730,000 of an investment product to 18 individuals, 11 of whom were clients, when that investment product had not been approved for sale by the Member, contrary to MFDA Rules 1.1.1, 2.1.1, and 2.4.2;

- (ii) He did not disclose to investors in the above-noted investment product that he was a shareholder in the company which was, in turn, the sole shareholder of the company offering the investment product, thereby placing his own interests above those of the investors and giving rise to an actual or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the investors, contrary to MFDA Rules 2.1.1 and 2.1.4;
- (iii) Between 2005 and 2007, he engaged in a dual occupation that was not disclosed to and approved by the Member by entering into a referral agreement and referring clients to a third party that administered pension plans, contrary to MFDA Rules 1.2.1(d), 2.1.1, and 2.4.2; and
- (iv) Between February 2006 and 2007, he obtained and maintained blank, pre-signed trading forms in client files and used such forms to process a trade in at least one client account, thereby:
 - a) failing to comply with the Member's express directions that he obtain original client signatures on trading authorization forms, contrary to MFDA Rules 1.1.2 and 2.5.1; and
 - b) engaging in business conduct or practice that was unbecoming, contrary to MFDA Rule 2.1.1.

TERMS OF SETTLEMENT

- (36) The Respondent agrees to the following terms of settlement:
- (i) The Respondent shall be suspended for a period of 10 years, commencing from the date the Settlement Agreement is accepted by the Hearing Panel, from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(c) of MFDA By-law No. 1;
 - (ii) The Respondent shall pay a fine in the amount of \$15,000.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
 - (iii) The Respondent shall pay costs in the amount of \$5,000.00, pursuant to section 24.2 of MFDA By-law No. 1; and
 - (iv) The Respondent shall attend in person at the Settlement Hearing.

FACTORS BEARING ON THE ACCEPTANCE OF THE SETTLEMENT AGREEMENT

10. The reasons for decision in *Re Ben Alden Kaley*, referred to in paragraph 5 of our reasons above, contain useful statements on the factors to be taken into account in accepting a settlement agreement and, also, on the appropriateness of the penalty. They read:

- (a) whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty 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;
- (g) whether the Settlement Agreement will foster confidence in the regulatory process itself;
- (h) the seriousness of the allegations proved against the Respondent;
- (i) the Respondent's past conduct, including prior sanctions;
- (j) the Respondent's experience and level of activity in the capital markets;
- (k) whether the Respondent recognizes the seriousness of the improper activity;
- (l) the harm suffered by investors as a result of the Respondent's activities;
- (m) the benefits received by the Respondent as a result of the improper activity;
- (n) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continued to operate in the capital markets in the jurisdiction;
- (o) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

- (p) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (q) the need to alerts others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (r) previous decision made in similar circumstances.

THE HEARING PANEL'S REASONS FOR DISPOSITION

Basic Principles

11. We accept the basic principle that a hearing panel should not interfere with a negotiated settlement where the penalties agreed upon are within the reasonable range of appropriateness having regard to the Respondent's conduct. We also take into account the MFDA Penalty Guidelines published in January 2007. We are in no doubt that the terms of the settlement are within both the reasonable range of appropriateness on the facts of the case and are appropriate having regard to the Penalty Guidelines.

12. Initially, in our deliberations there was some concern that the amount of the fine (\$15,000) was not sufficiently larger than the amount that the Respondent received as a result of his conduct as stated in allegations in the Amended Notice of Hearing (\$12,070), having regard to the principles of deterrence and disgorgement. We are now satisfied that this concern is satisfactorily answered by the facts and considerations that we now set forth.

13. The Respondent is 51 years old, and previously terminated his relationship as a mutual fund salesperson and branch manager with IPC, effective June 27, 2008. Since that time, that is, some two years ago, he has not been registered, nor is he currently registered, in the securities industry in any capacity. He remains licensed to sell insurance in Ontario. The Respondent has no prior disciplinary history with the MFDA.

14. There are mitigating factors specific to the nature of the Respondent's admitted misconduct. He entered into a written referral agreement regarding his Maypoint activities and

states that he believed he could enter into the referral agreement pursuant to his insurance registration and, correspondingly, that the related documentation reflected this belief.

15. The Respondent personally invested \$30,000 in a Maypoint debenture. His investment in Maypoint reflected his belief that it was a viable investment, and suitable for qualified investors.

16. With respect to the 2006 blank pre-signed forms, the Respondent was able to subsequently satisfy the Member that the clients had approved the trades in question.

17. By entering into a Settlement Agreement, the Respondent has accepted responsibility for his misconduct and thus avoided the necessity of the MFDA conducting a full hearing on the merits.

18. With respect to the magnitude of the harm to clients, we are informed that Maypoint debentures have not made interest or principle payments to Maypoint debenture holders in several years and there is no prospect of it doing so. With respect to the referrals the Respondent made to GMA, clients were advised of the fee arrangement, and Staff is not aware of any client complaints in this regard.

19. With respect to the client harm that we are asked to consider as a factor regarding the Respondent's conflict of interest, MFDA Staff submits that although "the Respondent did not disclose his conflict of interest to Maypoint investors or to IPC Investment Corporation ("IPC") Staff cannot go so far as to say [or] submit that any client harm *arose* due to this factor, and there is indeed ambiguity as to whether disclosure to investors might have impacted their decision to invest or not to invest."

THE SETTLEMENT AGREEMENT DISPOSITION

20. On June 18, 2010, we signed the operative part of the order set forth in the Settlement Agreement. It reads as follows:

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

- (1) The Respondent shall be suspended for a period of 10 years, commencing from the date the Settlement Agreement is accepted by the Hearing Panel, from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member effective from the date of this Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- (2) The Respondent shall pay a fine in the amount of \$15,000.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (3) The Respondent shall pay costs in the amount of \$5,000.00, pursuant to section 24.2 of MFDA By-law No. 1; and
- (4) If at any time a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, the Corporate Secretary shall prepare copies of the requested exhibits, redact any and all intimate financial or personal information therefrom, and provide the redacted copies to the non-party, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this 8th day of July, 2010.

“John W. Morden”

The Hon. John W. Morden,
Chair

“Robert C. White”

Robert C. White,
Industry Representative

“Selwyn Kossuth”

Selwyn Kossuth,
Industry Representative