



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: Brian Leonard Sukhdeo

Heard: September 19, 2017 in Toronto, Ontario

Decision: September 19, 2017

Reasons for Decision: October 6, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Guenther W. K. Kleberg	Industry Representative
Joseph A. Yassi	Industry Representative

Appearances:

H. C. Clement Wai)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Christopher Horkins)	Counsel for the Respondent
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Background

1. This is a settlement hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (“MFDA”). The hearing was held on September 19, 2017. The full settlement agreement dated September 19, 2017 (“Settlement Agreement”) entered into between Staff of the MFDA and Brian Leonard Sukhdeo (“Mr. Sukhdeo” or the “Respondent”) is available on the MFDA website and will not be set out in detail here. Mr. Sukhdeo, who appeared at the Settlement Hearing, was represented by counsel.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the September 19, 2017, hearing, with reasons to follow. These are our reasons for the decision.

3. The Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) since 1996. Since 2004 he was registered in Ontario with Worldsource Financial Management Inc. (“Worldsource”), a Member of the MFDA. He conducted business with Worldsource in Ancaster, Ontario.

4. On August 31, 2017, he resigned from Worldsource and since the resignation, has not been registered in the securities industry in any capacity. At all material times, he was also licensed to sell life insurance and accident and sickness insurance and continues to be so licensed.

Alleged Conduct

5. On December 20, 2016, the MFDA issued a Notice of Hearing alleging that the Respondent opened a new account for a client, MW, on behalf of an unregistered individual, JM, who had been a mutual fund salesperson, but had not been registered in that capacity since 2003. The Respondent did not meet with or receive instructions from client MW, contrary to MFDA Rules 2.2.1 and 2.1.1.

6. A first appearance was set for March 9, 2017, at which time a hearing on the merits was scheduled for June 28-29, 2017. In the meantime, Worldsource became aware that V Corporation, one of the Respondent's clients unrelated to client MW, had loaned the Respondent \$32,400, contrary to MFDA Rules 2.2.2 and 2.1.4. This information was passed on by the Member to the MFDA. The June hearing was adjourned and the two allegations were to be heard on the merits on September 18 and 19, 2017.

7. Settlement discussion took place between the Respondent and the MFDA over all this period and a Settlement Agreement was concluded on September 18, 2017.

Settlement Agreement

8. In paragraph 32 of the Settlement Agreement, both the Respondent and the MFDA agree that the Respondent:

- a) From May 2011 to October 2012, opened a new account at the Member for a client that the Respondent never met [with] or received instructions from and failed to perform the necessary due diligence to learn the essential facts relative to client MW and failed to ensure that the investments were suitable and appropriate for the client MW, thereby engaging in conduct contrary to MFDA Rules 2.2.1 and 2.1.1; and
- b) Between March 2014 and May 2017, the Respondent borrowed \$32,400 from a client, thereby engaging in personal financial dealings with a client which gave rise to a conflict of interest or potential conflict of interest that the Respondent failed to disclose to the Member and/or address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.1 and 2.1.4.

9. The Respondent accepts that in both cases, for the purpose of this hearing, the Respondent's conduct is contrary to MFDA Rules. There are a large number of cases where MFDA Approved Persons have been disciplined for borrowing money from their clients. See, for

example, *Re Zenon Smiechowski* File No. 201007. Such conduct creates a conflict of interest. Rule 2.1.4 states:

“Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of 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.”

10. Worldsource has policies and procedures which prohibit borrowing between an Approved Person and a client. The Respondent did not disclose to the Member his borrowing from client V Corporation.

11. Similarly there are MFDA Rules that require the Member and Approved person to “Know-Your-Client.” These are spelled out in detail in Rule 2.2.1. The very first subsection states: “Each Member and Approved Person shall use due diligence...to learn the essential facts relative to each client and to each order or account accepted.’ It is not possible to ‘know-your-client” without having communication with the client.

12. The Respondent and the MFDA in paragraph 33 of the Settlement Agreement agree on the following terms of settlement:

- a) The Respondent will attend in person, on the date set for the Settlement Hearing;
- b) The Respondent shall be prohibited for a period of 24 months from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1 (e) of MFDA By-law No. 1;
- c) The Respondent shall, within 30 days of acceptance of the Settlement Agreement pay a fine in the amount of \$7,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- d) The Respondent shall immediately pay costs in the amount of \$2,500 pursuant to s. 24.2 of MDA By-law No. 1.

13. As stated above, the details of each of these matters are set out in Part IV of the Settlement Agreement and will not be set out here.

Acceptance of Settlement Agreement

14. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

15. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.

16. A two year prohibition is a significant penalty and indicates the seriousness of the conduct. The conduct was not part of a larger scheme, but rather consisted of two unrelated matters.

17. The clients did not incur any financial loss because of the Respondent's conduct. No trading was done in MW's account and the loan from V Corporation was fully repaid by the Respondent.

18. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct, recognizes its seriousness, and has exhibited remorse.

19. The penalty imposed is in line with cases cited by both counsel and is consistent with the MFDA Penalty Guidelines. Moreover, the Respondent has previously paid a fine imposed by Worldsource for his conduct.

20. 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.

21. 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.”

22. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. We were told by counsel for the MFDA that the Settlement was “the project of hard bargaining” and that there are “lots more facts.” There were, we were told, “many drafts.” The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel. For example, although the Settlement Agreement refers to criminal convictions against JM and ongoing civil proceedings against the Respondent and the Member that are still at the discovery stage, we have not been given other information about them.

23. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: “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.” There are many similar statements by MFDA Panels stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: “A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement

process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.” This is particularly so, we should add, when experienced counsel have been the negotiators.

24. The penalty agreed to in this case clearly falls within “a reasonable range of appropriateness.” Moreover, the costs against the Respondent permit the MFDA to recover a portion of the costs attributable to conducting the investigation and the hearing.

25. For the above reasons we accepted the Settlement Agreement.

DATED this 6th day of October, 2017.

“Martin L. Friedland”

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

“Guenther W. K. Kleberg”

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Industry Representative

“Joseph A. Yassi”

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