



**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: Lawrence Philip Fike**

Heard: December 7, 2017 in Toronto, Ontario

Decision: December 7, 2017

Reasons for Decision: December 18, 2017

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Guenther W. K. Kleberg	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

David Halasz	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Michael Byers	)	Counsel for the Respondent
	)	
Lawrence Philip Fike	)	Respondent, in person
	)	

## **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 December 7, 2017. The full Settlement Agreement, dated October 16, 2017, entered into between Staff of the MFDA and Robert Philip Fike (“Mr. Fike” or the “Respondent”) is available on the MFDA website and will not be set out in detail here. Mr. Fike was represented by counsel and appeared in person.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the December 7, 2017 hearing, with reasons to follow. These are our reasons for the decision.

3. The Respondent is 75 years old and was registered in the mutual fund industry for more than 40 years. Between December 1, 2005 and March 2017, he was registered in Ontario as a mutual fund sales person (now known as a Dealing Representative) with Equity Associates Inc. (“Equity” or “the Member”), a Member of the MFDA. At all material times, the Respondent resided in and conducted business in or around the Barrie, Ontario area.

4. In March 2017, the Respondent ceased being registered with Equity and retired. The Respondent is no longer registered in the securities industry in any capacity.

## **Concentration in Precious Metal Sector Funds**

5. Respondent’s clients’ investment holdings were concentrated in precious metals sector funds. In 2015, the Respondent serviced approximately 360 clients, with assets under administration totaling approximately \$24 million. Over 250 clients serviced by the Respondent had portfolios that had over 30% of the holdings in precious metal sector funds, and approximately 90 of these clients were seniors. Approximately 42% of the assets under administration of the Respondent were invested in precious metal sector funds.

6. The precious metal sector funds held by clients serviced by the Respondent consisted of mutual funds suitable for investors with a high risk tolerance.

7. Five clients, who were not sophisticated investors, complained about their concentration in precious metal sector funds and their losses in those funds. Two clients, JL and DL, were a married, retired couple, ages 63 and 66 in 2008 at the time they became clients of the Respondent. They transferred over half a million dollars from another mutual fund dealer to the Respondent. Based upon the Respondent's recommendation, they agreed to invest in two precious metal sector mutual funds with a high risk rating. Throughout the time they were clients of the Respondent – between October 2008 and May 2014 – they held around or above 50% of their investments in these two precious metal sector funds. Details of the dealings between the couple, JL and DL, and the Respondent are set out in paragraphs 14- 28 of the Settlement Agreement.

8. Another client was SL, the daughter of JL and DL, who was a client of the Respondent between May 2010 and May 2014. Based on the Respondent's recommendation, she agreed to invest in two precious metal sector mutual funds with a high risk ranking. Throughout the time the Respondent serviced her accounts, she held around or above 50% of her investments in two precious metal sector funds. The details of her dealings with the Respondent are set out in paragraphs 30- 46 of the Settlement Agreement.

9. The other two clients who complained to the Member were MG and SG, a retired married couple who were age 68 and 67 in September 2011, when they became clients of the Respondent at the suggestion of their friends JL and DL. They transferred about \$100,000 to the Respondent and based on the Respondent's recommendation invested in two precious metal sector funds with a high risk ranking. Throughout the time the Respondent serviced their accounts at Equity, client MG held 100% and client SG held about two-thirds of their investments in the two precious metal sector funds. They also had about \$150,000 in an account at another financial institution, invested in bank stocks and Guaranteed Investment Certificates. Details of their dealings with the Respondent are set out in paragraphs 47-62 of the Settlement Agreement.

## **Contraventions**

10. The Respondent admits in paragraph 67 of the Settlement Agreement that:
- a) between October 2008 and May 2014, he failed to use due diligence to learn and accurately record the essential Know-Your-Client factors relative to 5 clients prior to making investment recommendations and accepting investment orders from the clients, contrary to MFDA Rule 2.2.1. and 2.1.1;
  - b) between October 2008 and May 2014, he failed to use due diligence to ensure that each order accepted and recommendations made to 5 clients was suitable for the clients and in keeping with their investment objectives having regard to the concentration of precious metal sector funds in the client accounts and the clients' Know-Your-Client information, including the client's investment knowledge and objectives, risk tolerance, age, and time horizon, contrary to MFDA Rules 2.2.1 and 2.1.1, and
  - c) between October 2008 and May 2014, he failed to present a balanced explanation of the risks and benefits of investing in precious metals sector funds, thereby failing to ensure that his recommendations were suitable for clients and in keeping with their investment objectives, contrary to MFDA Rule 2.2.1 and 2.1.1.

## **Terms of Settlement**

11. The Respondent agreed in paragraph 68 of the Settlement Agreement to the following terms of settlement:
- a) 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;
  - 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;

- c) The Respondent shall pay costs of this proceeding in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- d) The payment by the Respondent of the fine and costs described above shall be made to and received by MFDA Staff in certified funds as follows:
  - i. \$5,000 (costs) shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
  - ii. \$2,500 (fine) shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
  - iii. \$2,500 (fine) shall be paid on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;
  - iv. \$2,500 (fine) shall be paid on or before the final business day of the fourth month following the Settlement Agreement by the Hearing Panel;
  - v. \$2,500 (fine) shall be paid on or before the final business day of the six months following the acceptance of the Settlement Agreement by the Hearing Panel;
- e) if the Respondent fails to make any of the payments described above in subparagraph 68(d), then any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA.

### **Acceptance of Settlement Agreement**

12. 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.

13. The conduct in this case was serious. The Know-Your-Client (“KYC”) rule is crucial to the proper functioning of a system of securities regulation. MFDA Rule 2.2.1 states, in part:

**2.2.1 “Know-Your-Client”.** Each Member and Approved Person shall use due diligence:

- (a) to learn the essential facts relative to each client and to each order or account accepted;
- (b) to ensure that the acceptance of any order for any account is within the bounds of good business practice; and
- (c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives.

14. MFDA Rule 2.2.1 codifies the 'Know-Your Client' and "Suitability" obligations that have consistently been recognized as an essential component of the consumer protection scheme of securities legislation and a basic obligation of a registrant and, as stated in earlier cases, "a course of conduct by a registrant involving a failure to comply with them is an extremely serious matter." See *Re Pretty* 2014 LNCMFDA 6 and *Re Daubney* 2008 LNONOSC338.

15. In the present case the Respondent admits that he breached Rule 2.2.1. He overloaded relatively unsophisticated investors – four of whom were retired and needed a steady income stream – with a high risk product. He discussed the benefits of or recommended that the clients invest in precious metal sector mutual funds *prior* to gathering KYC information or prior to completing KYC documents with clients. He failed to provide a balanced presentation about the risks and volatility of precious metal sector funds.

16. It is appropriate that the Respondent should be permanently prohibited from conducting securities related business in any capacity. It is also reasonable that he pay costs of \$5,000, which permits the MFDA to recover a portion of the costs attributable to conducting the investigation and the hearing.

17. A more difficult question is whether the fine is reasonable. We think it is. It is in line with the cases cited to us by counsel and with the MFDA Penalty Guidelines. The Respondent has received a very significant sanction by being prohibited from conducting securities related business in any capacity. The combination of a prohibition and a not insignificant monetary fine provides deterrence to others in the industry.

18. It should also be noted that compensation – more than the amount lost – has been made by the Member to JL and DL.

19. Further, the Respondent has been registered in the Mutual Fund industry for over 40 years, and during that time has not been the subject of a disciplinary proceeding by the MFDA. We also note that the Respondent is retired and on a fixed income.

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

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.”

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

**DATED** this 18<sup>th</sup> day of December, 2017.

“Martin L. Friedland”

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Martin L. Friedland, CC, QC  
Chair

“Guenther W. K. Kleberg”

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Industry Representative

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