



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: Claude David Fox-Revett

Heard: October 26, 2017 in Toronto, Ontario

Decision: October 26, 2017

Reasons for Decision: December 8, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC	Chair
Guenther W. K. Kleberg	Industry Representative
Robert C. White	Industry Representative

Appearances:

Michelle Pong)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Stephen Canto)	Counsel for the Respondent
)	
Claude David Fox-Revett)	Respondent, In Person
)	

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated October 12, 2017 (“Settlement Agreement”) between the staff of the MFDA and Claude David Fox-Revett (“Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in section IV of the agreement.

Contraventions

2. The Respondent admitted that on November 13, 2013, the Respondent performed 8 trades in the accounts of clients RB and CO without having obtained instructions from them on which funds would be purchased, contrary to MFDA Rule 2.3.1(b).

Agreed penalties

3. The agreed penalties were: i) a reprimand; and ii) a costs award of \$2,500.

Considerations

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty should not be inconsistent with the results in similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on him of the agreed penalty.

Nature of the Misconduct

5. By not obtaining specific instruction as to which securities to purchase with the proceeds of redemption of securities, the Respondent engaged in discretionary trading contrary to the MFDA Rule.

Other considerations in determining acceptability of agreed penalties

6. The clients were spouses. The Respondent met with them on November 13, 2013 when he was instructed to redeem securities and to invest the proceeds in conservative investments.

7. Using a limited trading authorization provided by the clients, but without the specific instruction as to the funds to be purchased, the Respondent proceeded to invest the monies in Cornerstone III Portfolio A, a conservative fund in which the clients, or one of them, had previously been invested.

8. On November 22, 2013, the Respondent met with the clients and advised them of the trades.

9. Several months later, when other matters arose not connected to this hearing, the clients complained about their lack of consent to the actual securities purchased with the proceed of the sales made on November 13, 2013.

10. There was no evidence that the clients suffered losses as a result of the trading in question.

11. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond any commissions and fees that he would normally be entitled to receive if the transactions had been carried out in the proper manner.

12. The Respondent has not previously been subject to MFDA disciplinary proceedings.

13. By entering into the Settlement Agreement, the Respondent has accepted responsibility for the Respondent's misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

14. Although the MFDA penalty guidelines do not suggest when a reprimand would be appropriate, the MFDA By-law does provide for one.

15. The precedent cases referred to by staff were not helpful in determining the acceptability of a reprimand and a costs award alone. Our case stands alone and is not in conflict with them because the circumstances are so different.

16. We believe that in the circumstances of our case a reprimand is an acceptable penalty.

17. We believe that the agreed penalties are fair and reasonable and will serve as a specific and general deterrent.

Costs

18. The costs award is reasonable.

Conclusion

19. We concluded, therefore, that the Settlement Agreement was in the public interest and, consequently, we accepted it.

Reprimand

20. After accepting the Settlement Agreement, we reprimanded the Respondent.

DATED this 8th day of December, 2017.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Robert C. White”

Robert C. White
Industry Representative

DM 585619

Schedule “1”

Settlement Agreement

File No. 201706



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Re: Claude David Fox-Revett

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By News Release, the Mutual Fund Dealers Association of Canada (“MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, a hearing panel of the Central Regional Council (“Hearing Panel”) of the MFDA should accept the settlement agreement entered into between Staff of the MFDA (“Staff”) and the Respondent, Claude David Fox-Revett (“Settlement Agreement”).

II. JOINT SETTLEMENT RECOMMENDATION

2. 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.

3. 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”.

4. 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

5. 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 IX) 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

6. Since May, 1994, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA.

7. At all material times, the Respondent conducted business in Newmarket, Ontario.

Contravention

8. At all material times, clients RB and CO (the “Clients”) were clients of Investors Group and the Respondent was the mutual fund salesperson assigned to service their accounts.

9. On November 13, 2013, the Clients met with the Respondent. The Clients were looking to reduce the costs being incurred within their investment portfolios at Investors Group. To accomplish their goals in this regard, the Clients wanted to redeem \$150,000 of mutual funds without incurring deferred sales charges (“DSC”)¹.

10. The Respondent states that he advised the Clients that they could redeem all the current fee free units found in accounts # ----352 and # ----633, and that he can use the proceeds of those sales to purchase units of a conservative fund.

11. Immediately following the November 13, 2013 meeting, the Respondent processed 8 trades within accounts # ----352 and # ----633 totaling \$43,225.55, which consisted of switches of matured fund units (i.e., units where the DSC schedule had expired) held by the Clients to units of a new fund, as described below:

November 13, 2013 Switches				
Account #	Account Type	Dollar Amount	Fund Redeemed	Fund Purchased
----352	Joint Non-reg	\$4,499.63	International Small Cap	Cornerstone III Portfolio A
----352	Joint Non-reg	\$8,042.94	Dividend Fund	Cornerstone III Portfolio A
----352	Joint Non-reg	\$1,173.81	Canadian Small Cap	Cornerstone III Portfolio A
----352	Joint Non-reg	\$2,492.10	Canadian High Yield Income Fund	Cornerstone III Portfolio A

¹ A deferred sales charge is a back-end fee that is charged to a mutual fund investor if he/she redeems his/her investment prior to the expiry of the deferred sales charge schedule (generally, ranging from 5 to 7 years in length). The deferred sales charge declines over the course of the deferred sales charge schedule.

-----352	Joint Non-reg	\$1,247.18	US Dividend Growth	Cornerstone III Portfolio A
-----352	Joint Non-reg	\$9,580.35	IG Putnam US High Yield Income Fund	Cornerstone III Portfolio A
-----633	Client CO's Non- reg	\$5,297.16	Investors Dividend Fund	Cornerstone III Portfolio A
-----633	Client CO's Non- reg	\$10,892.38	Investors Canadian Equity	Cornerstone III Portfolio A
Total		\$43,225.55		

12. The Respondent processed the trades using a Limited Trade Authorization provided by the Clients.

13. Prior to processing the trades described above in paragraph 11, the Respondent did not obtain instructions from the Clients with respect to which funds would be purchased.

14. On November 22, 2013, the Clients met with the Respondent. At that time the Respondent advised the Clients that he had processed the trades described above in paragraph 11.

Additional Factors

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

16. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegation.

V. CONTRAVENTIONS

17. The Respondent admits that on November 13, 2013, the Respondent performed 8 trades in the accounts of the Clients without having obtained instructions from the Clients on which funds would be purchased, contrary to MFDA Rule 2.3.1(b).

VI. TERMS OF SETTLEMENT

18. The Respondent agrees to the following terms of settlement:
- a) the Respondent shall be imposed with a reprimand, pursuant to section 24.1.1(a) of MFDA By-law No. 1;
 - b) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1;
 - c) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rule 2.3.1(b); and
 - d) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

19. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

20. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section

20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA *Rules of Procedure*. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

21. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

22. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA By-law No. 1.

23. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

24. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing

panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

25. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of MFDA By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

26. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

27. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

28. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

29. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

30. A facsimile copy of any signature shall be effective as an original signature.

DATED this 12th day of October, 2017.

“Claude David Fox-Revett”

Claude David Fox-Revett

“MB”

Witness – Signature

MB

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement



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ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada ("MFDA") issued a News Release pursuant to section 24.4 of MFDA By-law No. 1 in respect of Claude David Fox-Revett ("Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] ("Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to sections 20 and 24.1 of MFDA By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that on November 13, 2013, the Respondent performed 8 trades in the accounts of the Clients without having obtained instructions from the Clients on which funds would be purchased, contrary to MFDA Rule 2.3.1(b).

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

1. The Respondent shall be imposed with a reprimand, pursuant to section 24.1.1(a) of MFDA By-law No. 1;

2. The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1;

3. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rule 2.3.1(b); and

4. 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*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]