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: Dorothy Jean Gabrysz

Heard: November 20, 2019 in Toronto, Ontario
Decision: November 20, 2019
Reasons for Decision: December 18, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Linda J. Anderson	Industry Representative
Brigitte J. Geisler	Industry Representative

Appearances:

David Barbaree	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Nicole McAuley	)	Counsel for the Respondent
Dorothy Jean Gabrysz	)	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 (the "MFDA"). The hearing was held on Wednesday, November 20, 2019. The full Settlement Agreement, dated September 30, 2019, entered into between Staff of the MFDA and Dorothy Jean Gabrysz (the "Respondent") is available on the MFDA website. The Respondent appeared at the Hearing in person and was represented by counsel.

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

3. Between May 2, 2008 and May 6, 2019, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG Securities Inc. ("WFG" or the "Member").

4. On May 6, 2019, the Respondent retired and voluntarily terminated her registration with WFG. She has not worked in the securities industry since that time.

5. At all material times, the Respondent conducted business in Richmond Hill, Ontario.

6. A Notice of Hearing was issued by the MFDA on December 14, 2018, setting out three allegations: Allegation #1 related to the Respondent making a loan application for client SR containing false and misleading information; Allegation #2 related to the Respondent failing to perform due diligence to ensure that leveraged investment recommendations she made to client SR satisfied the Member's leverage suitability requirements; and Allegation #3 related to failing to report a complaint to the Member.

The Settlement Agreement

7. In Paragraph 41 of the Settlement Agreement, the Respondent admitted the violations alleged in paragraph 6 above, admitting to the following three contraventions:

a) In November 2009, the Respondent prepared and submitted client account forms and a loan application for client SR which the Respondent knew contained false and misleading information, thereby failing to observe high standards of ethics and

conduct in the transaction of business and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

b) In November 2009, the Respondent failed to perform the necessary due diligence to learn the essential facts relative to client SR to ensure that the leveraged investment recommendations she made to client SR satisfied the Member's leverage suitability requirements in its policies and procedures, contrary to MFDA Rules 2.2.1, 1.1.2, 2.5.1, and 2.1.1.

c) After receiving a complaint from client SR in December 2015, the Respondent failed to report the complaint to the Member, contrary to the Member's policies and procedures, MFDA Policy No. 3 subsection 9-2, MFDA Policy No. 6, subsection 4.1(a), and MFDA Rules 1.1.2, 1.4(b), 2.5.1, and 2.1.1.

8. In Paragraph 42 of the Settlement Agreement, Staff and the Respondent agreed to the following terms of settlement:

a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 2 years from the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

b) The Respondent shall pay a fine in the amount $20,000, pursuant to s.24.1.1(b) of MFDA By-law No. 1, which shall be payable on the date this Settlement Agreement is accepted by a Hearing Panel;

c) The Respondent shall pay costs in the amount of $5,000, pursuant to s.24.2 of MFDA By-law No. 1 on the date that this Settlement Agreement is accepted by a Hearing Panel;

d) If the Respondent becomes registered again in the future, she shall comply with MFDA Rules 2.1.1, 2.2.1, 1.1.2, 2.5.1, 1.4(b), MFDA Policy No. 3 and MFDA Policy No. 6, and

e) The Respondent will attend in person on the date set for the Settlement Hearing.

Agreed Facts

9. The agreed facts are set out in detail in paragraphs 6 to 39 of the Settlement Agreement and will not be repeated in full here.

10. In brief, in November 2009 the Respondent recommended and facilitated the implementation of a leveraged investment strategy, whereby client SR would borrow $100,000 to purchase mutual funds. The Respondent prepared a WFG New Client Account Form and a Loan Application which was signed by client SR. These were submitted to the Member and the funds were obtained for client SR.

11. The New Client Account From stated that Client SR held assets of $650,000, had liabilities of $132,000, and had a net worth of $518,000. It also stated that client SR's annual income was $60,000. The forms, however, contained false and misleading information. The client's assets were, in fact, inflated by $342,500, the liabilities were reduced by $21,000, and the client's yearly income was inflated by $10,000.

12. The Member and the loan company had policies and procedures requiring Approved Persons, including the Respondent, to assess and determine whether a leveraged investment recommendation was suitable for a client. In particular, WFG's policies and procedures stated that the total borrowed funds must not exceed 30% of the client's verifiable net worth, and the client's total debt payments must not exceed 35% of the client's Total Debt Service ratio.

13. As a result of the false and misleading statements, client SR's loan application appeared to meet the required percentages and therefore met the Member's suitability requirements. The percentages using the correct figures, however, would not have satisfied WFG's leverage suitability requirements.

14. Six years later, in December 2015, client SR complained to the Respondent about her investments. MFDA Policy No. 6, subsection 4.1(a) and WFG's policies and procedures require an Approved Person to report to his or her current Member whenever the Approved Person is the subject of a client complaint in writing. The Respondent did not report to WFG that she had received a complaint from client SR. The Respondent states that she did not believe this amounted

to a formal complaint, but now realizes that her understanding was incorrect and that this amounted to a complaint, which ought to have been reported.

The Misconduct

15. MFDA Hearing Panels have consistently held that completing account forms and loan applications with false or misleading information is conduct that contravenes the standard of conduct set out in MFDA Rule 2.1.1. See *Re McAuley* MFDA File No. 201018; *Re Sarker* MFDA File No. 201327; *Re Gragasin* 2014 LNCMFDA 44; and *Re Laurie* 2015 LNCMFDA 119.

16. MFDA Rule 2.2.1 has codified the "Know-Your-Client" and "suitability" obligations recognized by securities regulators. There are many cases recognizing breaches of these requirements. See *Re Daubney* 2008 LNONOSC 338; *Re DeVuono* MFDA File No. 201102; and *Re Arseneau* 2012 LNCMFDA 93.

17. As stated above, there are policies and procedures that require that Approved Persons report complaints to the Member.

Acceptance of the Settlement Agreement

18. 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.

19. The conduct in the present case is serious. The Know-Your-Client and suitability obligations are essential to the protection of the public. A breach of Rule 2.2.1, involving the preparation and submission to a Member of information an approved Person knows to be false and misleading is a very serious matter.

20. There are, however, a number of mitigating factors. Unlike other similar cases, this case concerns only one client, and is not part of a broader pattern of conduct by the Respondent. Further, although the Respondent was registered for more than 10 years, the conduct at issue in these proceedings occurred in the second year of her registration.

21. The Respondent has not previously been the subject of MFDA disciplinary procedures.

22. As of the date of the Settlement Agreement, there is no evidence that client SR (or any other client) has suffered a financial loss by participating in the leveraged investment strategy recommended and facilitated by the Respondent.

23. Staff states that they are satisfied that the Respondent recognizes the seriousness of her misconduct. There appeared to the Hearing Panel to be genuine remorse by the Respondent. She voluntarily terminated her registration with WFG in May 2019. Moreover, by entering into the Settlement Agreement, the Respondent has accepted responsibility for her actions and avoided the time and expense of a full disciplinary hearing.

24. The two-year prohibition from conducting securities related business and a monetary penalty of $20,000 are not out-of-line with the new Sanctions Guidelines as well as the cases cited to us by counsel. See *Re Sarker* MFDA File No. 201337; *Re Sulkers* 2014 LNCMFDA 46; *Re Gragasin* 2014 LNCMFDA 44; and *Re Sobrevilla* File No. 201351.

25. The monetary penalty and the two year prohibition provide a significant measure of specific and general deterrence.

26. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal affirmed the British Columbia Supreme Court's statement with respect to a settlement by the British Columbia Securities Commission at paragraph 49 of *British Columbia Securities Commission v. Seifert* [2006] BCJ No. 225, aff'd [2007] BCCA No. 484:

> "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."

27. 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. Respecting settlements is particularly desirable in cases, such as this one, where experienced counsel were involved.

28. 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."

29. The penalty and the costs agreed to in this case clearly fall within "a reasonable range of appropriateness."

30. For the above reasons the Panel accepted the Settlement Agreement.

DATED this 18th day of December, 2019.

"Martin L. Friedland"
Martin L. Friedland, CC, QC
Chair

"Linda J. Anderson"
Linda J. Anderson
Industry Representative

"Brigitte J. Geisler"
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