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: Gillian Ann Gibson-Sargeant

Heard: April 21, 2011 in Toronto, Ontario
Reasons for Decision: July 18, 2011

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Kathleen J. Kelly	Chair
Linda J. Anderson	Industry Representative
David W. Kerr	Industry Representative

Appearances:

H. C. Clement Wai	)	For the Mutual Fund Dealers Association of Canada
Gillian Ann Gibson-Sargeant	)	Respondent, in person

Present:

Stephen Glanville	)	Investigator, Mutual Fund Dealers Association of Canada

BACKGROUND

1. By Notice of Hearing, dated March 8, 2010, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") was convened on April 21, 2011, in Toronto, Ontario, to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept a settlement agreement ("Settlement Agreement") entered into between Staff of the MFDA and Gillian Ann Gibson-Sargeant ("the Respondent") on April 8, 2011, and revised April 21, 2011, with respect to allegations in the Notice of Hearing.

2. The Settlement Agreement was prepared in conformity with Section 24.4 of By-law No. 1 and the Notice of Settlement Hearing had been prepared and publicized in accordance with Rule 15.2(1) of the MFDA Rules of Procedure. Accordingly, the Hearing Panel was in a position to consider whether or not it was appropriate to accept the Settlement Agreement.

3. At the outset of the Settlement Hearing, the Panel considered a joint Motion by Staff and the Respondent to move the proceedings "in camera". This motion was brought pursuant to Rule 15.2(2) of the Rules of Procedure, which provides as follows:

> 15.2(2) A Hearing Panel may, on its own initiative or at the request of a party, order that all or part of the settlement hearing be held in the absence of the public, having regard to the principles set out in Rule 1.8.

4. Rule 1.8(2) provides as follows:

> (2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

5. We granted the Motion that all submissions and documents would be heard and accepted in camera. Both Staff and the Respondent agreed 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.

6. In the Settlement Agreement, the Respondent admits that in November 2006, she became an employee of the Bank of Montreal, Private Client Group. On December 12, 2006 the Respondent was registered in Ontario as a mutual fund salesperson working in a call centre for BMO Investments Inc. ("BMO Investments"). On November 16, 2007, BMO Investments terminated the Respondent as a result of the matters described herein. The Respondent is not currently registered in the securities industry in any capacity.

7. The Respondent admits that between September and October 2007, she processed three redemptions in two accounts, without obtaining instructions, authorization or approval from the clients. She then directed the proceeds of the redemptions in the approximate amount of $10,000 into her own bank account. By misappropriating the monies the Respondent failed to deal fairly, honestly, and in good faith, with the clients, contrary to MFDA Rule 2.1.1.

8. BMO Investments repaid the clients affected and the Respondent repaid BMO Investments for the amounts misappropriated.

9. On April 1, 2009, the Respondent was convicted and sentenced criminally for the aforementioned matters.

10. The Panel noted that the Agreed Facts expressed in the Settlement Agreement were incomplete. The Panel considered this and concluded that there were sufficient facts stated to support a finding of misconduct.

11. The purpose of this hearing is to accept or reject the settlement agreement pursuant to Section 24.4.3 of By-law No. 1 of the MFDA. In performing this task the Panel must be mindful of the public interest. On the other hand, it is clearly established that a Hearing Panel should accept a settlement recommended by Staff of the MFDA unless it falls outside the reasonable range of what is appropriate in the circumstances.

12. The complete background facts are detailed in the settlement agreement and need not be elaborated on further here. On consent of the parties, the Panel obtained further information which was of assistance in making our decision:

(a) We were assured by both counsel and the Respondent that the Respondent has not been subject to any previous MFDA disciplinary proceedings.

(b) We were told that the MFDA Staff was satisfied that the transactions, which the Respondent admitted to, were isolated and not part of a wider activity.

(c) The Respondent testified that she:

(i) did not think about or plan, the misappropriation in advance;

(ii) did not benefit from the misappropriation;

(iii) repaid the money with the assistance of her family;

(iv) received a suspended sentence, completed 18 months probation, and received counseling;

(v) wrote letters of apology to the clients affected by her actions, as well as the Branch Manager.

THE LAW

13. Approved Persons are obligated to deal fairly, honestly and in good faith with clients and observe high standards of ethics and conduct in the transaction of business in accordance with MFDA Rule 2.1.1. This rule encompasses the most fundamental obligations of all registrants in the securities industry, and is designed to protect the public interest.

14. The misappropriation of client funds by an Approved Person is dishonest conduct which is inconsistent with the standard of conduct set out in MFDA Rule 2.1.1.

FACTORS TO CONSIDER REGARDING ACCEPTANCE OF A SETTLEMENT AGREEMENT

15. MFDA Hearing Panels have considered the following factors when determining whether a proposed settlement should be accepted:

(a) whether acceptance of the Settlement Agreement would be in the public interest and whether the penalties 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; and

(g) whether the Settlement Agreement will foster confidence in the regulatory process itself.

Investors Group Financial Services (Re), [2005] MFDA Ontario Regional Council, File No. 200401 at p. 2-4.

IQON Financial Inc. (Re), [2007] MFDA Pacific Regional Council, Hearing Panel Decision dated May 24, 2007 ("*IQON*"), File No. 200713 at p. 9.

16. A Hearing Panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within the reasonable range of appropriateness given the conduct of the Respondent.

Clark (Re), [1999] I.D.A.C.D. No. 40 at p. 3.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 10.

17. The British Columbia Court of Appeal recently acknowledged the importance and usefulness of settlements in achieving outcomes which further the goals of the securities regulatory context, citing:

> 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 the means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.

British Columbia Securities Commission v. Seifert, 2007 BCCA 484, at p. 16, para 49.

18. In addition, MFDA Hearing Panels have recognized that settlement agreements are reached by parties after significant discussion and negotiations, and they represent what the parties believe, with their knowledge and experience, is an appropriate resolution.

> *Evangeline Securities Limited (Re)*, [2008] MFDA Atlantic Regional Council, File No. 200816 at para. 10.

FACTORS TO CONSIDER REGARDING THE APPROPRIATENESS OF THE PROPOSED PENALTY

19. Hearing Panels frequently consider the following additional factors when determining whether a penalty is appropriate:

(a) the seriousness of the allegations proved against the Respondent;
(b) the Respondent's past conduct, including prior sanctions;
(c) the Respondent's experience and level of activity in the capital markets;
(d) whether the Respondent recognizes the seriousness of the improper activity;
(e) the harm suffered by investors as a result of the Respondent's activities;
(f) the benefits received by the Respondent as a result of the improper activity;
(g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
(h) the damage caused to the integrity of the capital markets in the jurisdiction, by the Respondent's improper activities;
(i) 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;
(j) the need to alert others to the consequences of inappropriate activities of those who are permitted to participate in the capital markets; and
(k) previous decisions made in similar circumstances.

Parkinson (Re), MFDA Ontario Regional Council, File No. 200501, at p. 22.

20. In addition, when determining the appropriate penalties to be imposed in disciplinary proceedings, Hearing Panels generally refer to the MFDA Penalty Guidelines. The Penalty

Guidelines are not binding, but rather are intended to assist Hearing Panels, Staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. The purpose of the MFDA penalty guidelines, is set out in the introduction to the Penalty Guidelines:

> ***Range Is Guideline Only***
>
> The penalty types and ranges stated in the Guidelines are not mandatory. The Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are intended to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances but are not binding on a Hearing Panel.

21. The MFDA Penalty Guidelines states, the following for misappropriation:

SPECIFIC FACTORS TO CONSIDER	PENALTY TYPES & RANGES
1. Nature of circumstances and conduct. 2. Client knowledge/consent. 3. Loss to client (s). 4. The Respondent's intent. 5. Whether the Respondent was unjustly enriched and obtained/attempted to obtain a financial benefit from the fraudulent conduct. 6. Whether the Respondent concealed or attempted to conceal the activity from the Member or the MFDA.	**Approved Person:** • Fine: Minimum of $25,000. • In almost all cases a permanent prohibition will be sought. • Fine should include the amount of any financial benefit to the Respondent.

PROPOSED PENALTIES

22. The Respondent has agreed to accept the following penalties, as set out in paragraph 20 of the Settlement Agreement:

(a) a permanent prohibition 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(e) of MFDA By-law No. 1; and

(b) the Respondent will attend in person, on the date set for the Settlement Hearing.

23. Staff is satisfied that the penalties proposed for the Respondent in this proceeding are commensurate with the nature of the misconduct described in the Settlement Agreement and, that it is in the public interest for the Hearing Panel to accept the Settlement Agreement.

APPLICATION OF FACTORS IN THE PRESENT CASE

24. Staff took the applicable factors set out above into account in reaching its Settlement Agreement with the Respondent, as follows:

(a) The Nature of the Misconduct

25. In the present case, the contraventions admitted to by the Respondent arose because the Respondent processed three redemptions in two accounts without obtaining instructions, authorization or approval from the clients, and directed the proceeds of the redemptions, in the approximate amount of $10,000, into her own bank account; thereby misappropriating the monies.

(b) The Respondent's Past Conduct and Sanctions

26. The Respondent has not been the subject of any previous MFDA disciplinary proceedings.

27. The Respondent was convicted and sentenced criminally for the aforementioned matters.

(c) The Respondent's Recognition of the Seriousness of her Misconduct

28. The Respondent's admissions to the misconduct described in the Settlement Agreement indicate that she recognizes the seriousness of the misconduct. By entering into a Settlement Agreement, the Respondent has accepted responsibility for her misconduct, and avoided the necessity of the MFDA having to conduct a full investigation and a full hearing on the merits.

29. Staff is satisfied that the Respondent is remorseful for having engaged in the misconduct, and that she appreciates the significance of her wrongdoing. The Respondent cooperated fully,

and promptly, in the settlement process with Staff. The Respondent was terminated from the Member as a result of her misconduct and has been out of the industry ever since.

(d) Client Harm, and Benefits Received by the Respondent

30. In the present case, the Respondent repaid the Member for the amounts misappropriated. The amounts misappropriated by the Respondent were repaid by the Member to the clients.

(e) Specific and General Deterrence

31. It is submitted that these are significant penalties which will deter future misconduct by the Respondent as the Respondent will be permanently prohibited from the industry, deter others from engaging in similar misconduct, and improves overall compliance by mutual fund industry participants.

(f) Previous Decisions Made in Similar Circumstances

32. The penalties imposed in almost all MFDA cases of misappropriation include a fine (usually in the amount of the misappropriated funds) and a cost component, in addition to a permanent prohibition from conducting securities related business, in any capacity, while in the employ of or associated with any MFDA Member.

33. In the circumstances of the present case, Staff has agreed to no fine or costs payable by the Respondent.

34. In accepting the settlement in *Re: Sampson*, the MFDA considered that the Respondent in that case had been previously criminally convicted on the misconduct as set out in the allegations.

> *Terry Lynn Sampson (Re)*, [2010] MFDA Prairie Regional Council, File No. 200930 at para. 18.

(g) The Protection of the Investing Public

35. The Settlement Agreement and proposed penalties are in keeping with the purpose of the MFDA, to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry, by ensuring high standards of conduct by its Members and Approved Persons.

36. Counsel for the MFDA submitted that, considering all of the foregoing, the proposed penalties are reasonable and proportionate, having regard to the conduct of the Respondent and the circumstances of this.

THE SETTLEMENT AGREEMENT AND THE PENALTY PROPOSED

37. The Panel has reviewed the facts, the submissions, and the proposed penalty agreed to by the MFDA and the Respondent.

38. These proceedings are open to the public and the results, and penalty, are public. The parties reached the proposed Settlement Agreement after discussion and negotiation and we are told it represents what they feel, with their knowledge and experience, is an appropriate resolution.

39. We are of the view that the Settlement Agreement and the proposed penalties are in keeping with the purpose of the MFDA to enhance investor protection, and strengthen public confidence in the Canadian Mutual Fund Industry, and capital markets, by ensuring high standards of conduct by its Members and Approved Persons.

40. The Panel finds that the events were isolated and not part of a repeated or ongoing series of misappropriations. We accept the Respondent's testimony and find that she has acknowledged her wrongdoing and has accepted responsibility for, and the consequences of, her actions. We note that she cooperated with the MFDA, and her employer, and in doing so avoided the necessity, cost, and delay that a full investigation and full hearing on the merits would entail. Accordingly, the Panel finds that the Settlement Agreement, along with its proposed penalty, is reasonable and in the public interest.

DISPOSITION

41. The Panel concludes that the Settlement Agreement along with its proposed penalty is reasonable and in the public interest, and accordingly is accepted by the Hearing Panel.

DATED this 18th day of July, 2011.

"Kathleen Kelly"
Kathleen J. Kelly,
Chair

"Linda Anderson"
Linda J. Anderson,
Industry Representative

"David Kerr"
David W. Kerr,
Industry Representative

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