



**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: Tracey Lynn Greenwood**

Heard: April 25, 2018 in Toronto, Ontario

Decision: April 25, 2018

Reasons for Decision: July 20, 2018

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

John Lorn McDougall, QC

Kenneth P. Mann

Joseph Yassi

Chair

Industry Representative

Industry Representative

Appearances:

H. C. Clement Wai

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Counsel for the Mutual Fund Dealers  
Association of Canada

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Annie Tayyab

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Counsel for the Respondent

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Tracey Lynn Greenwood

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Respondent, in Person

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## **I. Introduction**

1. By Notice of Hearing dated September 13, 2017, the Mutual Fund Dealers Association of Canada (“MFDA”) alleged misconduct against Tracey Lynn Greenwood (“Respondent”).

2. The Notice of Hearing called for a hearing before a hearing panel of the Central Regional Council (“Hearing Panel”) of the MFDA. On the return of the Notice of Hearing, the matter was adjourned from time to time and was finally fixed for hearing on the merits on April 25, 2018.

3. The Notice of Hearing sets out the following allegations of violations of the By-laws, Rules or Policies of the MFDA:

**Allegation #1:** Between January 2014 and February 2016, the Respondent borrowed \$30,000 from client MB, thereby engaging in personal financial dealings with a client which gave rise to a 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 interest of the client, contrary to MFDA Rules 2.1.1 and 2.1.4.

**Allegation #2:** On June 12, 2014 and on March 17, 2015, the Respondent provided false or misleading responses on the Member’s annual questionnaire to Approved Persons by denying that she had borrowed money from clients, thereby misleading the Member and interfering with its ability to supervise the Respondent’s conduct, contrary to MFDA Rule 2.1.1.

4. On the evening of April 24, 2018 the Respondent entered into a settlement agreement (“Settlement Agreement”) with Staff of the MFDA (“Staff”) in which the Respondent agreed to a proposed settlement of the matters for which the Respondent could be disciplined pursuant to sections 20 and 24.1 of By-law No. 1.

5. In paragraph 26 of the Settlement Agreement, the Respondent admits that:

- a) between January 2014 and February 2016, she borrowed \$30,000 from client MB, thereby engaging in personal financial dealings with a client which gave rise to a conflict of interest that she 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; and
- b) on June 12, 2014 and on March 17, 2015, she provided false or misleading responses on the Member's annual questionnaire to Approved Persons by denying that she had borrowed money from clients, thereby misleading the Member and interfering with its ability to supervise the Respondent's conduct, contrary to MFDA Rules 2.1.1.

6. In paragraph 27 of the Settlement Agreement, the Respondent agreed to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$5,000 (the "fine") pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the payment of the fine shall be made in 5 consecutive monthly installments of \$1,000, commencing on April 25, 2018 and ending on August 25, 2018;
- c) the Respondent shall successfully complete an industry compliance course acceptable to Staff of the MFDA within six (6) months of the date this Order, pursuant to section 24.1.1(f) of By-law No. 1;
- d) the Respondent shall pay costs in the amount of \$2,500 (the "costs"), pursuant to s. 24.2 of MFDA By-law No 1;
- e) the payment of the costs shall be made on April 25, 2018;
- f) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.1.4; and
- g) the Respondent will attend in person, on the date set for the Settlement Hearing.

7. The MFDA issued a press release dated April 24, 2018 to the public to advise that the hearing on the merits on April 25, 2018 would instead be a hearing to consider whether the Hearing Panel should accept the Settlement Agreement. The Hearing Panel agreed to this procedure and

granted an order abridging the required notice period to allow the settlement hearing to proceed on April 25, 2018.

8. The Respondent filed a Reply dated October 15, 2017 in which she provided further facts relating to the matter, including those explaining her difficult family circumstances at the relevant time. These are dealt with in the Agreed Facts and the Respondent's Position sections of the Settlement Agreement which are reproduced below.

9. Under the terms of Rule 15: Settlement Agreements, a statement of the relevant facts is to be agreed and included in the settlement agreement. By virtue of Rule 15.3, the Hearing Panel is not to be provided with facts other than those which are set out in the Settlement Agreement. It follows therefore that the facts set out in Part V, the Respondent's Position, are agreed facts and have been taken as such by the Hearing Panel.

## **II. Decision**

10. After considering the Settlement Agreement, together with the submissions made by Staff and counsel for the Respondent, the Hearing Panel unanimously accepted the Settlement Agreement. The Hearing Panel signed the order to that effect and indicated Reasons for Decision would follow in due course. These are those Reasons for Decision.

## **III. Settlement Agreement Part IV, Agreed Facts and Part V, the Respondent's Position (Parts IV & V)**

### **Registration History**

6. The Respondent has been registered as a mutual fund salesperson (now known as a Dealing Representative) in Ontario since July 17, 2006 and in British Columbia since February 17, 2015 with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA.

7. The Respondent acted as Branch Manager between June 2010 and November 2016. She is currently a Senior Financial Consultant.

8. At all material times, the Respondent conducted business in the Kingston, Ontario area.

### **Borrowing from a Client**

9. At all material times, Investors Group maintained policies and procedures prohibiting its Approved Persons, including the Respondent, from borrowing from clients.

10. In 2014, the Respondent was unable to renew a second mortgage on her home due to a decline in the value of her collateral.

11. On January 21, 2014, the Respondent obtained an unsecured loan from client MB totaling \$25,000 to cover the shortfall in her home financing. The Respondent provided client MB with a handwritten promissory note to evidence the loan.

12. Client MB obtained the funds that she loaned to the Respondent by means of a cash advance on a credit card, unrelated to any of client MB's accounts at Investors Group, which offered a low interest rate for a temporary period as a promotional offer. When the low interest period expired, the annual interest rate on the credit card increased to 19%.

13. The Respondent agreed to make all required payments, including interest payments on the credit card, by payment to client MB and did so in a timely fashion.

14. In May 2015, the amount owing on the credit card was approximately \$20,000. Client MB advanced another \$5,000 to the Respondent which was wholly funded by an additional cash advance from the credit card.

15. On October 25, 2015, the Respondent provided client MB with a handwritten note signed by the Respondent that acknowledged the outstanding debt to client MB. In the handwritten note, the Respondent also stated that client MB would be named as a beneficiary of the Respondent's life insurance policy and repaid from insurance proceeds in the event of the Respondent's death.

16. The Respondent named client MB as a beneficiary of her life insurance policy.

17. In February 2016, the Respondent repaid the full amount owing on client MB's credit card by payment directly to client MB.

18. The Respondent did not disclose to Investors Group that she had borrowed monies from client MB.

### **Misleading the member**

19. On June 12, 2014, the Respondent completed Investors Group's 2014 Annual Consultant Certificate in which she falsely responded to an inquiry from Investors Group by denying that she had borrowed money from a client.

20. On March 17, 2015, the Respondent completed Investors Group's 2015 Annual Consultant Certificate in which she, once again, falsely responded to an inquiry from Investors Group by denying that she had borrowed money from a client.

21. The Annual Consultant Certificate is a tool used by Investors Group to supervise its Approved Persons, and detect actual or potential conflicts of interest that may need to be addressed.

### **V. THE RESPONDENT'S POSITION**

22. The Respondent states that client MB had been a close friend since childhood.

23. The Respondent is a single mother. The Respondent states that she borrowed the monies from client MB to address a financing issue relating to her home (see paragraph 10 above). The Respondent states that client MB was aware of the Respondent's situation and loaned monies to assist the Respondent.

24. The Respondent states that, at about same [sic] time, her personal circumstances worsened as a result of domestic abuse which resulted in the involvement of the police, the Children's Aid Society, and health care providers.

25. Before accepting the loan, the Respondent discussed with her regional director at Investors Group that she intended to borrow money from a client. The Respondent and the regional director agreed that the Respondent would need to transfer the client to another Approved Person prior to borrowing any monies. The Respondent states that because of the strain from the circumstances set out in paragraph 24 she forgot to inform Investors Group that she was proceeding with borrowing monies from client MB or transfer the client to another Approved Person.

### **IV. Discussion and Analysis**

11. The relevant rules and provisions in this matter are:

a) MFDA Rules 2.1.1 and 2.1.4:

### **2.1.1 Standard of Conduct**

Each Member and each Approved Person of a Member shall:

- a. deal fairly, honestly and in good faith with its clients;
- b. observe high standards of ethics and conduct in the transaction of business;
- c. not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
- d. be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

### **2.1.4 Conflicts of Interest**

- a. 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.

#### **b) Section 24.4 of MFDA Bylaw No. 1 (Settlement Agreements)**

12. MFDA Rule 2.1.1 sets out the standard of conduct to be followed by all Members and Approved Persons. The Rule encompasses the most fundamental obligations of all registrants in the securities industry.

13. MFDA Rule 2.1.4 sets out the requirement for Approved Persons to be aware of potential conflicts of interest between Approved Persons and clients; places a mandatory obligation on Approved Persons to immediately disclose conflicts, actual or potential, to the Member, which in turn is required to ensure the conflict is disclosed in writing to the client; it imposes a corresponding obligation on the Approved Persons and the Member to ensure that such conflicts are addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

14. Previous MFDA Hearing Panels have determined that where an Approved Person borrows money from a client, such circumstances give rise to a conflict of interest within the meaning of MFDA Rule 2.1.4.

*In the Matter of Arnold Tonnies*, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Hearing Panel Decision dated June 27, 2005 (“Tonnies”) at p. 14.

15. Investors Group policies and procedures prohibit borrowing between an Approved Person and a client.

16. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As was stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, quoting the reasoning in the I.D.A. matter of *Milewski (Re)*:

We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel “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. [Emphasis added.]

*Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16, at para. 37.

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 11, Ontario District Council Decision dated July 28, 1999.

17. The principle that a Hearing Panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness assists the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

*British Columbia Securities Commission v. Seifert*, 2007 BCCA 484 at para. 31.

18. The primary goal of securities regulation is the protection of the investor and that principle underlies all securities regulation including establishing a reasonable range or zone of appropriateness.

*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.) at paras. 59, 68.

19. MFDA Hearing Panels have taken into account the following considerations 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 penalty 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.

*Jacobsen (Re)*, 2007 LNCMFDA 27, at para. 68.

20. It was submitted by Staff that, when determining the appropriate sanctions to impose, a Hearing Panel should consider:

- a) the protection of the investing public;
- b) the integrity of the securities markets;
- c) specific and general deterrence;
- d) the protection of the MFDA's membership; and
- e) the protection of the integrity of the MFDA's enforcement processes.

*Tonnies, (supra)* at p. 22.

21. The factors in this case which the Hearing Panel considered to be particularly germane in its consideration of the appropriateness of the agreed penalty were:

- 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 need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- f) previous decisions made in similar circumstances.

*In the Matter of Stephan Headley*, [2006], Hearing Panel of the Ontario Regional Council, MFDA File No. 200509, Hearing Panel Decision dated February 21, 2006, at para. 85.

22. The MFDA Penalty Guidelines recommend the following penalties and considerations for Personal Financial Dealings:

#### **SPECIFIC FACTORS TO CONSIDER**

1. Whether there were circumstances which may make the offensive activity less objectionable – pre-existing/family relationship between client and the Respondent.
2. Whether the activity was an isolated incident or part of a larger pattern of conduct involving multiple clients.
3. Whether the conflict of interest was explained to the client.
4. Whether the conflict of interest was disclosed to the Member and its consent obtained.

23. In previous reported cases, MFDA Hearing Panels dealt with circumstances similar to the present case in a manner which was not inconsistent with the agreed penalties in this case:

Case	Facts	Penalty
In the Matter of Byron H. Daues, [2014] Hearing Panel of the Central Regional Council, MFDA File No. 201339, Panel Decision dated September 4, 2017.	Daues borrowed \$40,000 from a client which he failed to repay. The Hearing Panel found that in doing this, Daues engaged in personal financial dealings with a client, thereby giving rise to a conflict of interest or potential conflict of interest. The Hearing Panel also found that Daues failed to report a number of events, each of which constituted a complaint in respect of personal financial dealings with a client, to the Member within two business days. The events included a client's verbal complaint to him in each of four months in respect of failure to make payments regarding the borrowed funds, the client's written complaint regarding the failure to repay, and the client's civil action regarding failure to repay.	Settlement Agreement: (a) lump sum payment to client of all the monies owed to her; (b) 2 months suspension (c) fine \$10,000, payable in 10 instalments of \$1,000 (d) costs \$5,000 payable in 10 instalments of \$500
In the Matter of Zenon Smiechewski, [2010] Hearing Panel of the Pacific Regional Council, MFDA File No. 201007, Panel Decision dated December 31, 2010.	Smiechewski borrowed \$25,000 from a client; failed to repay the loan; failed to disclose the loan to his Member; and failed to advise his Member that the client had commenced a legal proceeding against him.	Settlement Agreement: 6 month suspension; Fine \$10,000; Costs \$5,000
In the Matter of Patricia Marva Cuthbert [2011], Hearing Panel of the Pacific Regional Council, MFDA File No. 201013, Panel Decision dated June 8, 2011.	The Respondent borrowed a total of \$14,300 from client EB, a long-time friend, which she failed to repay as promised prior to client EB passing away. The Respondent did not disclose her personal financial dealings with the client EB to the Member, contrary to the Member's policies and procedures. The Respondent was eventually sued by client EB's estate for repayment of the debt and the parties reached a settlement agreement calling for the Respondent to make repayment in installments. At the hearing the Respondent admitted the misconduct.	A prohibition until the later of 9 months from the decision or when the Respondent fully repaid the loan to the estate; re-write industry course; \$5,000 fine; and \$2,500 in costs.
In the Matter of Kimberly Ann Haylock [2013] Hearing Panel of the Central Regional Council No. 201243, Panel Decision dated June 18, 2013.	The Respondent borrowed a total of \$2,200 from client MB. The Respondent and client MB were friends. Following the loan the client periodically inquired about the repayment of the loan. On those occasions the Respondent advised that she was unable to pay. Upon a complaint to the Member, the Member repaid the loan. The Respondent reimbursed the Member. Client redeemed mutual funds to fund the loan. The Hearing Panel accepted a Settlement Agreement.	\$3,000 fine, payable in 2 installments of \$1,500; and \$2,200 in costs

24. It is the Hearing Panel's responsibility to decide whether the agreed penalties fall within a zone of reasonable appropriateness. More specifically, it decides the bounds of that zone based on the facts and circumstances before it, how other Hearing Panels dealt with similar circumstances and on the submissions of Staff and the Respondent. All are helpful but none are dispositive independently. Similarly, the fact that Staff and the Respondent both support the settlement is to be expected and carries little weight.

25. The Hearing Panel was mindful of the fact that the Respondent has had an unblemished disciplinary record with the MDA and that she was under great personal stress at the time she borrowed the money in question from a long-time personal friend who was also a client. She duly paid the money back in full. No loss was suffered. Without more, the penalties agreed fall well outside any zone of reasonable appropriateness.

26. However that is not the end of it, as the Respondent twice falsely responded to the Member's annual questionnaire to Approved Persons by indicating she had not borrowed money from a client. Her excuse was she forgot, but that is simply not credible when she also said that her superiors had told her that she would have to assign the client to another sales representative if she were to borrow from her long-time friend.

27. The Hearing Panel reached the conclusion, not without difficulty, that the failure to answer the questionnaire correctly was a significant breach of an important protection for the integrity of the mutual fund industry and the ability of the Member to supervise the Respondent's activities. It was that event that led us to conclude that the settlement was within a zone of reasonable appropriateness.

## V. Conclusion

28. The paramount objective of a Hearing Panel in assessing the penalties agreed to is to be satisfied that the objective of securities regulation laid out in the *Pezim* case is served by accepting a settlement which will be viewed by the members of the securities industry as being neither too severe or too lenient, but in all the circumstances will be considered as just and fair. We concluded that the Settlement Agreement met that objective.

*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557  
(S.C.C.) at paras. 59, 68.

**DATED** this 20<sup>th</sup> day of July, 2018.

“John Lorn McDougall”

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John Lorn McDougall, QC  
Chair

“Kenneth P. Mann”

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Kenneth P. Mann  
Industry Representative

“Joseph Yassi”

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