



**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: Brian Arthur Greigson**

Heard: January 24, 2019 in Toronto, Ontario  
Decision and Reasons: February 27, 2019

**DECISION AND REASONS**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC  
Colleen Waring  
Joseph A. Yassi

Chair  
Industry Representative  
Industry Representative

Appearances:

David Babin	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
Christopher J. Somerville	)	Counsel for the Respondent
	)	
Brian Arthur Greigson	)	Respondent, by teleconference
	)	
	)	

## **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 January 24, 2019. The full Settlement Agreement, dated January 14, 2019, entered into between Staff of the MFDA and Brian Arthur Greigson (“Greigson” or the “Respondent”) is available on the MFDA website. The Respondent, who appeared by teleconference, was represented by counsel at the Hearing.

2. The Panel was prepared to have accepted the proposed Settlement Agreement at the conclusion of the hearing, with reasons to follow, but because of a miscommunication between the MFDA and the Respondent, the fine and costs agreed upon in the Settlement Agreement had not been deposited by the Respondent at the start of the Hearing. All parties agreed that we should proceed with the Settlement Hearing, as scheduled, and that the funds would be deposited by the Respondent as soon as possible after the Hearing. Under the circumstances, the Panel reserved its decision at the conclusion of the Hearing and would wait for notice from the MFDA that the funds had been deposited.

3. The funds have now been deposited with the MFDA. We accept the Settlement Agreement and will sign the formal agreed-upon Order. These are our reasons for our decision to accept the Settlement Agreement.

4. The Respondent became registered in the mutual fund industry in 1995. After various positions in the industry, he was registered in Ontario as a dealing representative (formerly known as a mutual fund sales person) with Excel Private Wealth Inc. (“Excel”), a Member of the MFDA.

5. He is not currently registered in the securities industry in any capacity. At all material times, the Respondent conducted his mutual fund business in Kingston, Ontario.

6. A Notice of Hearing was issued by the MFDA on July 27, 2018, setting a date for a first appearance on October 9, 2018. At that first appearance, the matter was adjourned to January 24, 2019 to enable the parties to try to reach a settlement. As stated above, a Settlement Agreement was reached by the parties on January 14, 2019.

## **Contraventions**

7. The MFDA alleged the following Allegation in its Notice of Hearing:

“Between January and March 2014, the Respondent referred two clients and one other individual to purchase \$75,000 of syndicated mortgages outside the Member, and received \$3,750 in referral fees outside the Member for doing so, thereby engaging in conduct contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103.”

8. The Respondent admits this Allegation in paragraph 24 of the Settlement Agreement.

## **Terms of Settlement**

9. The Settlement Agreement sets out the following terms of settlement in paragraph 25:

- a) the Respondent shall pay a fine of \$7,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall be prohibited for a period of three months from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- c) the Respondent shall pay costs of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1; and
- d) the Respondent will attend by teleconference and be represented by counsel attending in person, on the date set for the Settlement Hearing.

## **Undisclosed Referral Agreement**

10. It is important that persons approved by the MFDA conduct their securities transactions through the Member and with the Member’s consent. The policy rationale underlying the prohibition on off-book business is that when transactions are carried out off a Member’s books, the Member loses its ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor. “Know Your Product” and “Know Your Client” rules are crucial parts of investor protection. See *Re Caicco* 2015 LNCMFDA 104.

11. MFDA Rule 1.1.1 provides:

“No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

- a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules...
  - b) all revenues, fees, or consideration in any form relating to any business engaged in by the Member is paid or credited directly to the Member and is recorded on the books of the Member...”
12. A Panel put it well in a 2010 case, *Re Laverdière* (File No. 200936 at paragraph 5):

“MFDA Rule 1.1.1 (a) is fundamental to the regulatory mandate of the MFDA. An Approved Person must not trade in securities other than through the firm employing him/her, and the firm must have knowledge and consent to those business dealings. The Rule enhances investor protection and strengthens public confidence in the Canadian Mutual Fund Industry, as it creates a regime whereby an approved person is only permitted to sell investment products that have first been approved for sale by the Member, and which are sold through the facilities of the Member, thus ensuring the trading activity is subject to appropriate review and supervision.”

13. Approved Persons have been made aware of the underlying rationale for these rules through a MFDA Staff Notice dealing with referral arrangements, as well as through a MFDA Bulletin specifically relating to syndicated mortgage securities. See MFDA Staff Notice 0043, “Referral Arrangements In Respect of Specific Securities,” March 4, 2013; and MFDA Bulletin #0583-P, “Transactions by Approved Persons in Syndicated Mortgage Securities, November 12, 2013.

14. Bulletin #0583-P advises that all syndicated mortgages sold or referred by Approved Persons must be facilitated through the accounts and facilities of the Member in accordance with the requirement of Rule 1.1.1 and are subject to all applicable MFDA Rules.

15. MFDA Rule 2.4.2 sets out when referral arrangements are permitted. It requires disclosure to the Member and the arrangement requires the Member to be a party to the arrangement.

## Agreed Facts

16. As set out in paragraph 11 and following of the Settlement Agreement, on December 16, 2013 the Respondent entered into a “Simple Referral Agent Agreement” with FMP Mortgage Investments Inc. (“FMP”) to refer investors to purchase syndicated mortgages issued by Fortress Real Capital (the “Referral Arrangement”). The Referral Arrangement provided that the Respondent would refer individuals to FMP in return for referral fees equal to 5% of the monies that the individuals referred by the Respondent invested in syndicated mortgage products.

17. The Respondent entered into the Referral Arrangement without the knowledge or approval of the Member, Excel.

18. Between January and March 2014, the Respondent referred three investors, of which two were Excel clients, to FMP. The three investors each purchased \$25,000 of syndicated mortgages in a Fortress Project known as Harmony Village Sheppard Inc. (“Harmony”), a condominium development.

19. In the course of referring the investors to FMP, the Respondent informed the investors of the opportunity to invest with FMP and provided brochures regarding FMP syndicated mortgage products to the three investors. Pursuant to the Referral Arrangement, FMP paid the Respondent \$3,750 in referral fees. FMP paid the referral fees directly to the Respondent.

20. On August 20, 2014, the Respondent disclosed to Excel that he had entered into the Referral Arrangement and that he had referred three investors, two of whom were clients, to FMP.

21. Excel did not have a referral arrangement with FMP, did not record any of the referral fees on its books and records, and had no knowledge of the Referral Arrangement until notified by the Respondent.

22. On January 20, 2017, Harmony was petitioned into receivership. The project was eventually sold by the court-appointed receiver to another developer, who completed the project.

23. The three investors were made substantially whole by a distribution to mortgagees made by the receiver in 2017.

## **Acceptance of the Settlement Agreement**

24. 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.

25. Although engaging in outside business transactions, such as the present undisclosed referral agreement, is serious, the conduct in the present case is at the lower range of the scale of seriousness. Only three clients purchased the product over a three-month period for a total of \$75,000.

26. The fine of \$7,500 is double the referral fees of \$3,750 received by the Respondent. So the Respondent has not benefited financially from the transactions.

27. The Respondent has been in the securities business since 1995 and has not been the subject of MFDA disciplinary action. The Respondent is not currently registered in the mutual fund industry and, according to paragraph 23 of the Settlement Agreement, “will not be returning to it.”

28. No client complained and there is no evidence of client loss.

29. The matter was brought to the Member’s attention by the Respondent, who cooperated fully with MFDA Staff. Moreover, by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct and saved the MFDA the time, resources and expenses associated with conducting a full hearing.

30. A fine of \$7,500, coupled with a three-month prohibition from conducting securities related business while in the employ of or associated with any MFDA Member, is a significant penalty. It offers a substantial measure of specific and general deterrence.

31. The award of costs of \$2,500 seems reasonable.

32. We have examined the numerous cases cited to us by the MFDA concerning other cases of outside business activity relating to referral arrangements. The penalty in the present case is not out of line with the penalties in those cases.

33. 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.”

34. 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 and where, we were told, they “worked hard to come to an agreement.”

35. 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.”

36. The penalty and the costs agreed to in this case clearly fall within “a reasonable range of appropriateness.”

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

**DATED** this 27<sup>th</sup> day of February, 2019.

“Martin L. Friedland”

Martin L. Friedland, CC, QC  
Chair

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