



**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: Steven John Hagerman**

Heard: June 16, 2020 by electronic hearing in Toronto, Ontario

Decision: June 16, 2020

Reasons for Decision: September 25, 2020

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, QC  
Guenther W. K. Kleberg  
Kenneth P. Mann

Chair  
Industry Representative  
Industry Representative

Appearances:

Paul Blasiak	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Karen Bernofsky	)	Counsel for the Respondent
	)	
	)	
Steven John Hagerman	)	Respondent
	)	
	)	

## **I. INTRODUCTION**

1. By Notice of Settlement Hearing, dated April 14, 2020, the Mutual Fund Dealers Association of Canada (“MFDA”) gave notice that an electronic hearing would be held before a hearing panel of the Central Regional Council of the MFDA (“Hearing Panel”) on June 16, 2020, to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept the settlement agreement (“Settlement Agreement”) entered into between Staff of the MFDA and Steven John Hagerman (“Respondent”).

2. Due to the existence of COVID-19, and with the consent of the parties, the Settlement Hearing was conducted by way of electronic hearing on June 16, 2020.

3. At the commencement of the Settlement Hearing, the Hearing Panel granted the joint request of the parties to move the proceedings “in camera” so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the *MFDA Rules of Procedure*.

4. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

5. After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on June 16, 2020. At that time, we advised that written Reasons would follow. These are those Reasons.

## **II. THE SETTLEMENT AGREEMENT**

6. The salient portions of the Settlement Agreement are as follows:

### **“IV. AGREED FACTS**

#### **Registration History**

6. Commencing in 1997, the Respondent was registered in the mutual fund industry.

7. From 1999 to May 1, 2014, the Respondent was registered in Ontario as a mutual fund salesperson/ dealing representative<sup>1</sup> with Independent Planning Group Inc. (“IPG”).
8. From 2002 to May 1, 2014, IPG was a Member of the MFDA.
9. On May 1, 2014, IPG amalgamated with another Member of the MFDA, IPC Investment Corporation (“IPC”).
10. From May 1, 2014 to June 22, 2018, the Respondent was registered in Ontario as a dealing representative with IPC.
11. The Respondent is not currently registered in the securities industry in any capacity.
12. At all material times, the Respondent conducted business in the Kingston, Ontario area.

### **Facilitating Stealth Advising and Failure to Know the Client**

13. At all material times, IPG’s policies and procedures stated the following with regard to stealth advising arrangements:

Stealth advising occurs when non-registered individuals engage in securities related business through various arrangements with Approved Persons of MFDA Member firms. Under this type of arrangement, client accounts are set-up at the dealer with a registered Approved Person as the representative on record, and trading activity is processed using the Approved Person’s representative code. However, a non-registered individual services the account and this individual provides advice and makes recommendations to clients with respect to securities in the account, directing the Approved Person to place the trades. Commission sharing generally takes place between the licensed and unlicensed individual. This practice is strictly prohibited [...]

[Emphasis in original]

14. At all material times, the Respondent conducted business at the office of a company owned by DH (the “DH Company”). DH is the Respondent’s brother. The DH Company provided financial planning, investing and insurance services to its clients.
15. DH was registered as a mutual fund salesperson until September 30, 2010. DH has not been registered in the securities industry in any capacity since that date.
16. At all material times, LW was employed as an administrative assistant at the DH Company.
17. LW has never been registered in the securities industry in any capacity.

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<sup>1</sup> In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

***RD***

18. In August 2013, RD and her spouse met with DH to discuss investments promoted by DH.
19. On October 15, 2013, RD requested that DH recommend an “investment vehicle” in which RD and her spouse could deposit, among other things, their monthly RESP contributions.
20. DH then spoke to the Respondent about opening an RESP account for RD at IPG. Although the Respondent has never met or communicated with RD, he agreed to open the account.
21. Based on DH’s instructions, LW then sent account opening documents in respect of an IPG RESP account (the “Account Opening Documents”) to RD for signature.<sup>2</sup>
22. The Account Opening Documents that LW sent to RD did not identify the “Representative” of IPG who would be responsible for servicing RD’s account. The relevant fields in the Account Opening Documents that identified the name of the Representative were left blank.
23. On or about October 28, 2013, RD signed the Account Opening Documents, and she returned the Account Opening Documents to LW or DH.
24. Unbeknownst to RD, after she returned the Account Opening Documents to LW or DH, the Respondent signed the Account Opening Documents as the Representative responsible for servicing RD’s account. The Account Opening Documents were then submitted to IPG for processing.
25. At the time when the Account Opening Documents were submitted to IPG for processing, the Account Opening Documents contained, among other things, RD’s Know-Your-Client (“KYC”) information, the names of RD’s beneficiaries, investment instructions to create a Pre-Authorized Chequing plan for RD in the amount of \$400 per month, and investment instructions pertaining to RD’s education savings grants.
26. The Respondent did not at any time:
  - a) discuss or review the Account Opening Documents with RD;
  - b) discuss or review RD’s KYC information with RD; or
  - c) receive investment instructions directly from RD.
27. In fact, the Respondent has never met or communicated with RD.
28. On or about November 12, 2013, IPG opened an RESP account for RD, and the Respondent became the Approved Person responsible for servicing the account.

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<sup>2</sup> The Account Opening Documents were in respect of an individual account for RD, and they were not in respect of RD’s spouse.

29. Between November 2013 and April 2014, based on the investment instructions contained in the Account Opening Documents, mutual fund purchases in the total amount of approximately \$2,880 were completed in RD's RESP account at IPG.

30. Between March and April 2014, the entire balance in RD's RESP account totaling approximately \$2,947.25 was transferred out of IPG to a segregated fund account serviced by DH. The Respondent had no communication with RD about the transfer and had no role in facilitating the transfer.

31. From the time that RD's RESP account at IPG was opened until it was transferred out of IPG by DH, the Respondent failed to contact, meet or communicate with RD to service the account.

32. By opening an RESP account at IPG for RD, submitting essential facts relative to the account (i.e.; KYC information) and processing trades in the account without communicating with RD, the Respondent contravened his obligations to ensure that:

- a) the KYC information recorded for the account was accurate;
- b) the account and the investments purchased were suitable; and
- c) the trades were properly authorized by the client;

contrary to MFDA Rules 2.2.1 and 2.1.1.

33. By processing securities related business in respect of an IPG account on the basis of advice and instructions provided by an unregistered individual who was not an employee or agent of IPG, the Respondent engaged in conduct that was contrary to the policies and procedures of the Member regarding stealth advising and MFDA Rules 2.2.1 and 2.1.1.

#### **RD's Complaint and Action Taken by the Member**

34. In 2018, RD submitted a complaint against DH to the Financial Services Commission of Ontario. During the course of preparing the complaint, RD reviewed documents related to her RESP account at IPG and observed that the Respondent was identified on the documents as the Approved Person responsible for servicing her RESP account at IPG.

35. As noted above, RD had never met with or communicated with the Respondent about her RESP account so she submitted a complaint against the Respondent to IPC and to the MFDA.

36. On June 22, 2018, after receiving and investigating RD's complaint, IPC terminated the Respondent's registration.

37. In July 2018, IPC sent letters to all clients other than RD whose accounts the Respondent serviced at the time of his termination to determine whether anyone other than the Respondent

provided the clients with securities related advice with regard to their IPC accounts.<sup>3</sup> No clients (other than RD) reported that they had received advice concerning securities related business in their IPG or IPC investment accounts from individuals other than the Respondent.

### **Additional Factors**

38. During the time that RD's RESP account was held at IPG, the value of the investments in the account increased by approximately \$67.25. There is no evidence that clients (including RD) suffered a financial loss as a consequence of the conduct of the Respondent that is described in this Settlement Agreement.

39. The Respondent received service fees in the total amount of approximately \$2.39 in his capacity as the Approved Person responsible for servicing RD's RESP account at IPG. There is no evidence that the Respondent received any material financial benefit from engaging in the conduct described in this Settlement Agreement.

40. The Respondent cooperated with the MFDA investigation, and he readily admitted to the conduct described in this Settlement Agreement.

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

42. 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 allegations.

### **V. CONTRAVENTIONS**

43. The Respondent admits that between October 2013 and April 2014, he opened an account and processed trades in an account for a client that he had never met or communicated with on the basis of advice and instructions provided by an unregistered individual, and failed to use due diligence to learn the essential facts relative to the client and to ensure that each order accepted was suitable, contrary to the policies and procedures of the Member regarding stealth advising and MFDA Rules 2.2.1 and 2.1.1.

### **VI. TERMS OF SETTLEMENT**

44. The Respondent agrees 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 4 months 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;

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<sup>3</sup> At the time of his termination, the Respondent serviced the accounts of 128 clients.

- b) the Respondent shall pay a fine in the amount of \$7,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which shall be payable in certified funds on the date that 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, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- d) the Respondent shall in the future comply with MFDA Rules 2.2.1 and 2.1.1; and
- e) the Respondent will attend in person or by videoconference on the date set for the Settlement Hearing.”

### III. THE LAW

7. MFDA Rule 2.1.1 states, in part, as follows:

“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; . . .”

8. This Rule prescribes the standard of conduct applicable to all registrants and is central to the MFDA’s mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

9. MFDA Rule 2.2.1 states:

“2.2.1 "**Know-Your-Client**". Each Member and Approved Person shall use due diligence:

- a) to learn the essential facts relative to each client and to each order or account accepted;
- b) to ensure that the acceptance of any order for any account is within the bounds of good business practice;
- c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account;

- d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client based on the essential facts relative to the client and the investments in the account, the Member or Approved Person has so advised the client before execution thereof and the Member or Approved Person has maintained evidence of such advice;
- e) to ensure that the suitability of the investments within each client's account is assessed:
  - i) whenever the client transfers assets into an account at the Member;
  - ii) whenever the Member or Approved Person becomes aware of a material change in client information, as defined in Rule 2.2.4; or
  - iii) by the Approved Person where there has been a change in the Approved Person responsible for the client's account at the Member; and
- f) to ensure that, where investments in a client's account are determined to be unsuitable, the Member or Approved Person so advises the client and makes recommendations to address any inconsistencies between investments in the account and the essential facts relative to the client and the Member or Approved Person maintains evidence of such advice and recommendations.”

10. Due diligence includes the obligation to know and fully understand the client's financial situation, current and continuing financial obligations, net worth, income, liquid assets, understanding of the market, and age relative to retirement.

*Badasha (Re)*, [2015] Hearing Panel of the Pacific Regional Council, MFDA File No. 201424, Panel Decision dated June 9, 2015, at para. 46.

11. Previous MFDA Hearing Panels have held that where an Approved Person opens a client account, updates the client's Know-Your-Client information and/or processes trades in the client's account without communicating directly with the client, the Approved Person has violated the Know-Your-Client obligation in Rule 2.2.1 and the standard of conduct in Rule 2.1.1.

*Gill (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 2017124, Panel Decision dated April 16, 2018, at para. 10.

12. As stated by the Hearing Panel in *Wray (Re)*:

“In order to fulfill the Know-Your-Client obligations, an Approved Person is required to learn the essential facts about his or her client directly from the client.”

*Wray (Re)*, Hearing Panel of the Central Regional Council, MFDA File No. 201661, Panel Decision dated June 8, 2017.

13. In the case before us, the Respondent admitted that he had never met nor communicated with the client. Clearly, by his conduct, the Respondent breached Rule 2.2.1.

14. As set out in paragraph 13 of the Settlement Agreement (*supra*), the Member had a clear policy with respect to stealth advising arrangements. Such arrangements prevent the Member from adequately supervising trading activity conducted on behalf of clients. They lead to clients receiving investment advice from unregistered and unqualified individuals. The clients are left unprotected.

15. In the present case, the Respondent admits that between October 2013 and April 2014, he opened an account and processed trades in an account for a client that he had never met or communicated with on the basis of advice and instructions provided by an unregistered individual, and failed to use due diligence to learn the essential facts relative to the client and to ensure that each order accepted was suitable, contrary to the policies and procedures of the Member regarding stealth advising and MFDA Rules 2.2.1 and 2.1.1.

*Settlement Agreement*, para. 43.

16. In addition, previous MFDA Hearing Panels have also held that an Approved Person's failure to comply with the Member's policies and procedures is a regulatory violation that is contrary to the standard of conduct set out in Rule 2.1.1.

*Lipovetsky (Re)*, [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201252, Panel Decision dated July 25, 2013.

*Dekker (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201959, Panel Decision dated December 17, 2019.

*Tonnies (Re)*, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005.

#### **IV. PRINCIPLES REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS**

17. In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties

set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

18. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

- i. Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- ii. Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- iii. Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- iv. Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- v. Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- vi. Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
- vii. Whether the Settlement Agreement will foster confidence in the regulatory process itself.

*Jacobson (Re), 2007 LNCMFDA 27.*

19. Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. These include:

- a) The seriousness of the allegations proved against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience in the capital markets;
- d) The level of the Respondent's activity in the capital markets;
- e) Whether the Respondent recognizes the seriousness of the improper activity;

- f) The harm suffered by investors as a result of the Respondent's activities;
- g) The benefits received by the Respondent as a result of the improper activity;
- h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- j) 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;
- k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- l) Previous decisions made in similar circumstances.

*Headley (Re)*, 2006 LNCMFDA 3 at para.85.

*In the Matter of Robert Roy Parkinson* (2005), Hearing Panel of the Ontario Regional Council, Decision and Reasons dated April 29, 2005, MFDA File No. 200501, at page 22.

## **V. CONSIDERATIONS IN THE PRESENT CASE**

20. Staff made detailed written and oral submissions as to how these principles applied to the case before us. These submissions included the following:

a) Nature of the Misconduct

21. We agree with the submission of Staff that the Know-Your-Client Rule is a basic obligation of a registrant and the failure to comply with it is serious misconduct and a breach of MFDA Rules 2.2.1 and 2.1.1.

b) The Respondent's Experience and Level of Activity in the Capital Markets

22. The Respondent was registered in the mutual fund industry for over 20 years. As an experienced dealing Representative, the Respondent ought to have known and respected the requirements of MFDA Rules 2.1.1 and 2.2.1.

c) Client Harm

23. There was no evidence before us that any client suffered a financial loss as a consequence of the Respondent's conduct that is described in the Settlement Agreement.

d) Benefits Received by the Respondent

24. We accept the submission of Staff that there was no evidence that the Respondent received any financial benefit from engaging in the conduct described in the Settlement Agreement.

e) The Respondent's Past Conduct including Prior Sanctions

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

f) The Respondent's Recognition of the Seriousness of the Misconduct

26. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and has saved the MFDA the time, resources and expenses associated with a full disciplinary proceeding.

g) Deterrence

27. We accept the submission of Staff that the proposed penalties will act as a general deterrent and reinforce the message that the misconduct described in the Settlement Agreement is serious and will not be tolerated by the MFDA.

28. We also believe that the proposed penalties will act as a specific deterrent regarding the Respondent engaging in misconduct in the future.

h) Previous Decisions Made in Similar Cases

29. Staff provided the Hearing Panel with a Chart seeking to show that the proposed resolution is within the reasonable range of appropriateness with regard to other decisions made by MFDA Hearing Panels in similar circumstances. In both his written and oral submissions, Staff Counsel compared each of the cases in the chart in the present case, outlining the similarities as well as the disparities.

30. The following cases were discussed:

- a) *Sukhdeo (Re)*, [2017] Hearing Panel of the Central Regional Council, MFDA File No. 2016103, Panel Decision dated October 6, 2017.
- b) *Gill (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201724, Panel Decision dated April 16, 2018.
- c) *Wray (Re)*, [2017], Hearing Panel of the Central Regional Council, MFDA File No. 201661, Panel Decision dated June 8, 2017.

## **VI. DECISION**

31. After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

## **VII. ORDER**

32. After accepting the Settlement Agreement, we made the following Order:

- 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 4 months from the date of this Order, pursuant to section 24.1.1(e) of MFDA By-law No.1;
- b) The Respondent shall pay a fine in the amount of \$7,500 on the date of this Order, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) The Respondent shall pay costs in the amount of \$5,000 on the date of this Order, pursuant to s. 24.2 of MFDA By-law No. 1; and
- d) 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 25<sup>th</sup> day of September, 2020.

“Thomas J. Lockwood”

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Thomas J. Lockwood, QC  
Chair

“Guenther W. K. Kleberg”

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Guenther W. K. Kleberg  
Industry Representative

“Kenneth P. Mann”

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