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: Kimberly Ann Haylock

Heard: June 18, 2013 in Toronto, Ontario
Reasons for Decision: July 5, 2013

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Honourable P. T. Galligan, Q.C.	Chair
Paul M. Moore, Q.C.	Industry Representative
Vasant Pachapurkar	Industry Representative

Appearances:

Rohit Kumar	)	Counsel, Mutual Fund Dealers Association of Canada ("MFDA")
Brad Moore	)	Counsel for the Respondent together with the Respondent, Kimberly Ann Haylock in person

1. The Staff of the Mutual Fund Dealers Association of Canada ("MFDA") and the Respondent entered into a settlement agreement which they had negotiated pursuant to s. 24.4.1 of MFDA By-law No. 1. They submitted the settlement agreement to this Hearing Panel, pursuant to Rule of Procedure 15.1, for approval or rejection. After considering the settlement agreement, the other material filed and upon hearing the submissions made by Enforcement Counsel and by counsel for the Respondent, we issued an order accepting the settlement agreement. These are our reasons for making that order.

2. As a preliminary matter, Enforcement Counsel noted that MFDA Rules require that a 10-day notice be given of a Settlement Hearing. In this case, the Notice was given on June 10, 2013 for a hearing to be held on June 18, 2013. Pursuant to MFDA Rules 1.3(1), 1.5 and 2.2(1), and with the consent of counsel for the Respondent, we exercised our authority to abridge the time for the Notice of Settlement Hearing which allowed the Settlement Hearing to proceed.

THE CONTRAVENTION

3. The Respondent admits that between February 17, 2010 and November 25, 2011, the Respondent engaged in personal financial dealings with client MB by borrowing approximately $2,200 from client MB, which amount remained outstanding until November 25, 2011, thereby giving rise to a conflict or potential conflict of interest between the interests of the Respondent and the interests of client MB, which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of client MB, contrary to MFDA Rule 2.1.4.

TERMS OF SETTLEMENT

4. The Respondent agreed to the following terms of settlement:

(a) the Respondent shall pay a fine in the amount of $3,000, pursuant to section 24.1(b) of MFDA By-law No. 1;
(b) the Respondent shall pay costs of this proceeding in the amount of $2,000, pursuant to sections 24.2 of MFDA By-law No. 1;
(c) the payment by the Respondent of the fine and costs in subparagraphs (a) and (b)

above shall be made to and received by Staff in certified funds as follows:

(i) $2,000 (costs) upon entering into the settlement agreement;

(ii) $1,500 (fine) on or before July 31, 2013; and

(iii)$1,500 (fine) on or before September 30, 2013;

(d) if the Respondent fails to make any of the payments described in subparagraph (c) above, then the MFDA shall summarily, without further notice, suspend the authority of the Respondent to conduct securities related business until such time as the fine or costs are paid;

(e) the Respondent shall in the future comply with all applicable MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.1.4, 2.1.1, 1.1.2 and 2.5.1; and

(f) the Respondent agreed to attend the Settlement Hearing in person.

THE CIRCUMSTANCES

5. The circumstances are set out in detail in paragraphs 6-23 inclusive of the Settlement Agreement which is attached as Appendix A to these Reasons for Decision. The following is a brief summary of them.

6. Conflict of Interest: For some years prior to 2010, the Respondent and her client had been friends. In February 2010, the Respondent personally borrowed $2,200 from her client. Between then and October 31, 2011 the client periodically inquired about repayment of the loan. On those occasions the Respondent said that she was unable to do so at the time. Upon a complaint being made to the Member, the Member repaid the loan. The Respondent later reimbursed the Member.

SERIOUSNESS OF THE CONTRAVENTION

7. It is always a serious matter when there is a conflict of interest between an Approved Person and her client. There are a number of factors which make this a very serious contravention:

(a) The client redeemed mutual funds held in her account in order to provide the loan to the Respondent;
(b) The loan provided to the Respondent was not promptly repaid by the Respondent even though she was asked to do so;
(c) The client involved is a senior;
(d) The Respondent did not provide the client security for the loan; and
(e) The Respondent did not disclose to the Member that she had borrowed money from a client.

CIRCUMSTANCES OF MITIGATION

8. In determining an appropriate remedy it is always necessary to consider mitigating circumstances. The circumstances of mitigation which we take into account are:

(a) The Respondent has no prior disciplinary history after many years of working in the financial services industry;
(b) The amount borrowed was small and both the client and the Member have been reimbursed;
(c) The misconduct appears to have been the result of errors in judgment;
(d) The Respondent acknowledged her responsibility and cooperated with the investigations conducted by the Member and by the MFDA;
(e) By agreeing to a settlement the Respondent has avoided the necessity of a full hearing which has saved inconvenience and embarrassment to her client and expense to the MFDA; and
(f) We are very impressed by the fact that the Member has disciplined the Respondent rather than terminating her. This indicates to us that the Member and its associated organization, the Royal Bank of Canada, who was her previous employer, consider her a valuable and trustworthy employee who has made a serious mistake but has learned her lesson and will not repeat it.

THE DUTY OF A HEARING PANEL AT A SETTLEMENT HEARING

9. It is well settled that our task is not to decide whether, in this case, we would have arrived

at the same decision as that reached by the parties in their settlement agreement. Rather, our duty is to determine whether the penalty is a reasonable one and whether it meets the objectives of the disciplinary process which are to maintain the integrity of the investment services industry and to protect the public. In *Re Professional Investments (Kingston) Inc.*, [2009] LNCMFDA 9 at paragraph 13 the following appears:

> 13. 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. As has been said: "The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made."

10. See also *Re Raymer*, [2009] LNCMFDA 15 at paragraph 4:

> 4. It is generally agreed that hearing panels should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness given the conduct of the Respondent. (See, for instance, *Re Rodney Jacobson*, June 11, 2007, Prairie Regional Council, No. 200712; *Re Clark*, [1999] I.D.A.C.D. No. 40, and *Re Milewski*, [1999] I.D.A.C.D. No. 17.)

11. The courts have addressed the importance of settlements and have approved of their place in the disciplinary process. See *B.C. Securities Commission v. Seifert*, [2006] BCJ No. 225, where the following appears at p. 49:

> 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. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. …

12. Finally we refer to the comments of an IIROC Hearing Panel in the recent case of *Re Vorstadt*, [2012] IIROC at p. 4:

> Before leaving this case we wish to stress the importance of respect for the settlement process. Settlement leads to fair, efficient and economical resolution of disciplinary matters. The settlement process should be encouraged and supported. In *Re Clarke*, [1999] I.D.A.C.D. No. 40, the Hearing Panel stated, at p. 3:
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> > The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement. [Emphasis added]

We subscribe to that view.

GUIDELINES AND OTHER DECISIONS

13. In determining whether a settlement is a reasonable one, a hearing panel is entitled to look at regulatory guidelines and other decisions. Guidelines are not binding upon a hearing panel and cannot derogate from its responsibility to decide what might be an appropriate penalty in a given case. However guidelines are useful in that they show what penalties members of the industry consider to be generally appropriate. In this case the guidelines for personal financial dealings suggest a minimum fine of $10,000. The fine and costs agreed to in this case are less than that.

14. Decisions in other cases can often be of some assistance in helping to indicate what might be a reasonable range of penalties. It is always necessary to be cautious about relying too heavily on decisions in other cases because no two cases are ever the same. We were referred to two decisions which bear some similarity to this case. They are *Smiechowski (Re)*, 2010 LNCMFDA 51 and *Cuthbert (Re)*, 2011 LNCMFDA 19. The fines in each of those cases were greater than the total of fine and costs agreed to in this case. However, in our view, the differences are not so great as to lead us to the conclusion that the fine agreed to is an unreasonable one.

15. The fine agreed to in this case is less than the fines imposed in those two cases. The fine is also less than the minimum fine suggested by the guidelines. This fine is probably at the low end of any reasonable spectrum, nevertheless we are not convinced that it is an unreasonable one.

IMPACT OF THE PENALTY

16. Monetary penalties are imposed to act as specific and general deterrence. The Respondent is an individual with limited resources. She is not a large organization. The penalty composed of a fine of $3,000 and costs of $2,000 is a significant penalty to her. The penalty imposed is sufficient to act as a specific deterrent to this Respondent and should be sufficient to alert all Approved Persons that similar conduct will attract significant consequences.

DECISION

17. At the conclusion of the hearing we withdrew from the hearing room to consult with one another. We considered the totality of the circumstances in this case. We put considerable weight on the fact that the amount of the loan was relatively small, ultimately the client and the Member were made whole, and the misconduct appears to have been an aberration from a long period of satisfactory employment. It appears to us that the aberration resulted from an error in judgment. We decided that the penalty did meet the objectives of the disciplinary process which are to maintain the integrity of the financial services industry and to protect the public. Accordingly we approved it.

DATED this 5th day of July, 2013.

"Patrick T. Galligan"
The Hon. Patrick T. Galligan, Q.C.,
Chair

"Paul M. Moore"
Paul M. Moore, Q.C.,
Industry Representative

"Vasant Pachapurkar"
Vasant Pachapurkar,
Industry Representative

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