



**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: Abner Sarabia Hufanda**

Heard: September 3, 2015, in Vancouver, British Columbia  
Reasons for Decision: September 16, 2015

**REASONS FOR DECISION**

Hearing Panel of the Pacific Regional Council:

Bradley Doney	Chair
Liz Chichka	Industry Representative
Elaine Davison	Industry Representative

Appearances:

Christopher Corsetti	)	For the Mutual Fund Dealers Association of
	)	Canada
	)	
Daniel Freudman	)	For the Respondent, Abner Sarabia Hufanda
	)	
	)	

## BACKGROUND

1. We were constituted as a Hearing Panel of the Pacific Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) to consider a settlement agreement dated July 16, 2015 (the “Settlement Agreement”) between the MFDA and Abner Sarabia Hufanda (the “Respondent”).

2. The Hearing Panel ordered that the proceedings be moved *in camera*.

3. The Hearing Panel then considered the Settlement Agreement and heard submissions from Counsel on why it was reasonable and appropriate. After considering the materials and submissions the Hearing Panel accepted the Settlement Agreement and signed an Order dated September 3, 2015, which provides:

- a) the Respondent shall be permanently prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 upon acceptance of this Settlement Agreement;
- c) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 upon acceptance of this Settlement Agreement; and,
- d) if at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

4. These are the reasons for the Hearing Panel's decision.

## **CONTRAVENTIONS**

5. The Respondent admits that between March 18, 2010 and December 31, 2012, he purportedly invested at least \$90,000 received from clients JM, MDJ, MJ and MT in a real estate investment outside the Member and thereafter failed to repay or otherwise account for the monies, contrary to MFDA Rules 2.1.1, 2.1.4, 1.1.1, and 1.2.1(d) (currently 1.2.1(c)).

## **THE MATERIAL FACTS**

### **Registration History**

6. From January 19, 2003 to April 19, 2013, the Respondent was registered in British Columbia as a mutual fund salesperson with PFSL Investments Canada Ltd. (the Member).

7. He was terminated by the Member on April 19, 2013 and is not currently registered in the securities industry.

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

### **Failure to repay or account for monies**

9. Sometime prior to March 2010, the Respondent purportedly attended a meeting in Bellingham, WA, USA, for a yet to be established multilevel marketing company (MLM) where he met RR and ZR (the Owners), a couple who were allegedly the founders of MLM.

10. The Owners purportedly told the Respondent that they were, in addition to establishing MLM, investing in real estate in Portland Oregon (Oregon Project). The Respondent was purportedly told that if he invested in their ventures he could expect returns of up to five times his investment and that returns would be paid in cash. All of the communications between the Respondent and the Owners were purportedly verbal.

11. Between July 2010 and June 2012, the Respondent purportedly gave the Owners \$90,000 that he received from clients JM, MDJ, MJ and MT to be invested on their behalf in the Oregon Project.

12. According to the Respondent, it appears the Owners ultimately absconded with all of the monies he purportedly gave to them to invest in the Oregon Project and have failed to repay or otherwise account for the monies to the Respondent, who in turn has been unable to repay or otherwise account for the monies to clients JM, MDJ, MJ and MT.

13. The Respondent states that he has been unable to locate the Owners and has had no further communications with them since initially giving them the monies. The Respondent claims that he has made repeated attempts to locate the Owners, including purportedly going to Portland in February 2013.

14. The Oregon Project was not an investment known to or approved by PFSL for sale by its Approved Persons, including the Respondent.

15. There is no evidence that the Owners or the Oregon Project ever existed, beyond Respondent's own assertions.

#### **Client JM**

16. JM was a friend of the Respondent and had been a client of PFSL since 2011.

17. In May 2012, JM gave the Respondent \$12,000 in two instalments. The first was for \$8,000 given directly to the Respondent with the knowledge and understanding that it was to be invested by him in an investment outside of PFSL on JM's behalf. The Respondent purportedly invested these monies in the Oregon Project and subsequently returned \$4,000 to JM, which the Respondent claimed represented JM's return on her investment.

18. The second instalment was a bank draft in the amount of \$4,000, made payable to the Respondent personally, which JM intended to be a contribution to an RESP account. The Respondent purportedly invested these monies in the Oregon Project too, without JM's knowledge or instructions.

19. JM did not receive a trade confirmation in connection with what she believed to be her RESP contribution of \$4,000, and consequently contacted PFSL. PFSL determined that no RESP had been set up for JM by the Respondent. This triggered PFSL's review and investigation of the Respondent's activities.

20. Of the total of \$12,000 the Respondent received from JM, \$11,000 was purportedly given to the Owners for investment in the Oregon Project and the remaining \$1,000 was spent for his own benefit.

21. In July 2013, the Respondent's aunt repaid JM on behalf of the Respondent. JM subsequently sent a letter to the Member on July 3, 2013 stating that all matters between herself and the respondent had been resolved. Client JM formally released the Respondent from any and all claims in a release executed on October 21, 2013.

#### **Client MDJ**

22. MDJ was the Respondent's aunt and during the material time was a client of PFSL.

23. In late 2011, MDJ gave \$14,000 to the Respondent, \$10,000 of which was to be deposited into a TFSA at PFSL. The account was never opened and the entire amount was purportedly invested in the Oregon Project.

24. On January 3, 2013, the Respondent presented MDJ with an account statement that purportedly showed that MDJ held an AGF segregated fund in a TSFA at PFSL with a market value of \$10,386.75. No TFSA was opened by the Respondent at the Member for MDJ and the number assigned to the account does not exist.

25. In July 2013, the Respondent's aunt TS agreed to repay MDJ on behalf of the Respondent. MDJ subsequently sent a letter to the MFDA on July 7, 2013 stating that all matters between herself and the Respondent had been resolved. MDJ formally released the Respondent from any and all claims in a Release executed on September 9, 2013.

#### **Client MJ**

26. MJ is the Respondent's cousin (daughter of client MDJ) and at all material times was a client of PFSL.

27. Between March 18, 2010 and April 4, 2011, MJ gave the Respondent a total of \$65,000 by way of personal cheques and bank drafts in the name of the Respondent personally. The Respondent told MJ that the funds had been invested in three separate mutual funds held in accounts in the Respondent's name. No such accounts existed. The Respondent purportedly invested the funds in the Oregon Project.

28. On November 1, 2011, the Respondent presented MJ with a "Statement of Account" that purportedly showed that MJ's \$65,000 was held in three separate accounts at PFSL in the Respondent's name. None of these three accounts were ever opened by the Respondent and the account numbers do not exist.

29. On August 19, 2013, the Respondent's parents repaid client MJ a total of \$60,000. MJ released the Respondent from any and all claims in a Release dated the same day.

#### **Client MT**

30. MT was a close friend of the Respondent.

31. In late 2012, MT gave the Respondent \$4,000. The Respondent did not provide any receipt or other written confirmation for the funds. MT gave the \$4,000 to the Respondent to

invest it on her behalf outside of PFSL. The Respondent did not invest the funds at any account at PFSL or in the Oregon Project. The Respondent acknowledges receiving the funds from MT but did not invest them on her behalf. He claims he cannot account for the funds.

## **Summary**

32. By accepting at least \$90,000 from clients, purportedly to invest on their behalf and then failing to repay or otherwise account for the funds, the Respondent engaged in conduct unbecoming an Approved Person and failed to deal with the clients fairly, honestly and in good faith, contrary to MFDA Rule 2.1.1.

33. By engaging in the conduct described above, the Respondent also engaged in personal financial dealings with the clients, thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.

34. To the extent the Oregon Project was a real investment, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of PFSL by investing the clients' monies in the Oregon Project outside of PFSL, contrary to MFDA Rule 1.1.1(a).

35. To the extent the Oregon Project was a real investment and any of the Respondent's activities did not constitute securities related business outside of the Member contrary to MFDA Rule 1.1.1(a), then the Respondent had and continued in another gainful occupation by selling the Oregon Project investments to the clients, contrary to MFDA Rule 1.2.1(d) (now Rule 1.2.1(c)).

## **ANALYSIS AND DECISION**

36. It is well established that a hearing panel should not vary a settlement that falls within a reasonable range. To do otherwise could compromise the settlement process.

37. We reviewed the penalties assessed in similar cases. The fine in this instance is at the low end of the range, however, a permanent prohibition from conducting securities related business while in the employ of or associated with any MFDA Member, is the ultimate sanction.

38. We are mindful that most of the funds wrongfully invested have been repaid and that the Respondent has not been previously the subject of disciplinary proceedings.

39. It is also our view that the settlement will have a deterrent effect.

40. For these reasons we approve the Settlement Agreement.

**DATED** this 16<sup>th</sup> day of September, 2015.

“Bradley Doney”

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Bradley Doney  
Chair

“Liz Chichka”

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Liz Chichka  
Industry Representative

“Elaine Davison”

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Elaine Davison  
Industry Representative

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