



**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: Mary Dee Happy Iturralde**

Heard: February 7, 2017 in Toronto, Ontario

Decision: February 7, 2017

Reasons for Decision: April 18, 2017

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

John Lorn McDougall Q.C.

Chair

Colleen Waring

Industry Representative

Joe Yassi

Industry Representative

Appearances:

Michelle Pong

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Counsel for the Mutual Fund Dealers

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Association of Canada

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Robert Brush

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Counsel for the Respondent

Michael L. Byers

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Mary Dee Happy Iturralde

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Respondent, In Person

## **INTRODUCTION**

1. By News Release dated February 6, 2017 the Mutual Fund Dealers Association of Canada (the “MFDA”) announced that a hearing would be held to consider whether, pursuant to section 24.4 of the MFDA By-law No. 1, a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement dated February 2, 2017 (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Mary Dee Happy Iturralde.

2. The MFDA had commenced a disciplinary proceeding in respect of the Respondent by Notice of Hearing dated October 12, 2016 (the “Notice of Hearing”). In the Notice of Hearing the MFDA alleged the following violations of the by-laws, rules or policies of the MFDA:

**Allegation #1:** In about May 2013, the Respondent accepted a \$20,000 bank draft from a client payable to the Respondent personally, and deposited the monies into the Respondent’s bank account, in order to facilitate the client’s investment in a discount travel ticket business, thereby engaging in conduct giving rise to a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4, 2.4.2, 2.5.1, 1.1.2, and 2.1.1.

**Allegation #2:** Between December 2011 and April 2014, the Respondent authorized and/or permitted an individual to use the Respondent’s personal bank accounts and credit cards to operate a discount travel ticket business which was subsequently determined to be fraudulent, thereby engaging in conduct or practice which is unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1.

**Allegation #3:** In September 2015, the Respondent misled MFDA Staff about authorizing and/or permitting an individual to use one of the Respondent’s personal credit

cards to operate a discount travel ticket business, which was subsequently determined to be fraudulent, contrary to MFDA Rule 2.1.1.

In the event, the MFDA did not proceed with Allegation #3 and it is thus not a subject of the Settlement Agreement.

3. We also considered a joint Motion by Staff and the Respondent to move the proceedings “in-camera”. This Motion was brought pursuant to Rule 15.2(2) of the MFDA Rules of Procedure, which provides as follows:

“(2) A Hearing Panel may, on its own initiative or at the request of a party, order that all or part of the settlement hearing be held in the absence of the public, having regard to the principles set out in Rule 1.8”.

4. Rule 1.8(2) provides as follows:

“(2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.”

5. We granted the Motion on the condition, which was agreeable to both Staff and the Respondent that, should the Hearing Panel accept the Settlement Agreement, we would provide Reasons for our Decision which, along with the Record of the Settlement Hearing, would be available to the public. This is consistent with Rule 15.2(3) of the MFDA Rules of Procedure.

6. After considering the Settlement Agreement, together with the full submissions made by counsel for the MFDA and by both counsel for the Respondent as well as having received satisfactory answers to the questions posed by Panel members, the Hearing Panel unanimously accepted the Settlement Agreement. The Hearing Panel made an order to this effect and

indicated that Reasons for Decision would follow in due course. These are those Reasons for Decision.

7. The portions of the Settlement Agreement which are relevant to these Reasons for Decision are as follows:

## **II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to section 24.1 of MFDA By-law No.1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "A".

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule "A", will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

## **III. ACKNOWLEDGEMENT**

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

#### **IV. AGREED FACTS**

6. Since December 2, 2011, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with PFSL Investments Canada Ltd. (“PFSL”), a Member of the MFDA.

7. At all material times, the Respondent conducted business in Toronto, Ontario.

#### **Background**

8. At all material times, MB operated a business which purported to sell discount travel tickets to consumers (the “Travel Business”). Among other activities, MB solicited investors in the Travel Business to provide funding to purchase travel tickets for re-sale.

9. MB has never been registered in the securities industry in any capacity and was never a PFSL client.

10. On or about February 15, 2015, MB was convicted of Defrauding the Public, contrary to section 380(1)(a) of the *Criminal Code*, R.S.C., 1985, c. C-46, in respect of approximately 70 individuals who paid \$301,736 to MB for travel services which were not provided to them. MB was sentenced to a period of incarceration of approximately 21 months and ordered to make full restitution.

11. On or about May 25, 2015, MB was convicted of operating a travel retailer without registration, contrary to section 4(1) of the *Ontario Travel Industry Act, 2002*, S.O. 2002, c.30, Sched. D – Ontario. MB was sentenced to a period of incarceration of 12 months and ordered to make restitution in the amount of \$81,578.21 in favour of 24 consumers who paid MB for travel services which were not provided to them.

12. As described in greater detail below, the Respondent authorized MB to use the Respondent’s personal bank accounts and credit cards, which MB used for various purposes, including in relation to the operation of the Travel Business. The Respondent

states that she was not involved in MB's fraudulent activities, and she did not, at any point during the material time, have knowledge of MB's fraudulent activities.

### **Allegation #1 – Personal Financial Dealings with a Client**

13. At all material times, client BL was a client of PFSL and the Respondent was the mutual fund salesperson assigned to service her accounts.

14. At all material times, PFSL maintained policies and procedures which stated:

...PFSL representatives are prohibited from becoming involved with new or existing clients in any kind of private investment schemes. Such schemes raise significant and direct conflicts of interest where the exercise of responsible judgment requires prohibition of the arrangements.

15. Sometime between March and May 2013, client BL met MB at a lunch where the Respondent was present.

16. Subsequent to this meeting, client BL was informed by MB of an opportunity to invest in the Travel Business and earn a guaranteed rate of return of 10% per month.

17. On or about May 30, 2013, client BL obtained a bank draft in the amount of \$20,000 payable to the Respondent (the "Bank Draft"). The Respondent states that the Bank Draft was to reimburse the Respondent for monies that the Respondent, at client BL's request, had paid to MB to invest in the Travel Business on behalf of client BL.

18. Client BL subsequently received an agreement signed by MB dated May 31, 2013 stating, "[t]his letter serves as an agreement between [client BL] and [MB] for the use of their money."

19. At the time that the Respondent received and deposited the Bank Draft, the Respondent was allowing MB to use the Respondent's credit cards and bank accounts for various purposes, including in relation to the operation of the Travel Business.

20. Client BL advises that she received monthly interest payments in respect of the investment in the Travel Business until January 2014.

21. Client BL advises that she was not repaid the principal of her investment in the Travel Business.

22. The Travel Business was not an investment which was known to or approved by PFSL, and PFSL was not aware that the Respondent had any involvement with MB or in relation to the operation of the Travel Business.

23. By virtue of the foregoing, the Respondent accepted the Bank Draft from client BL, and deposited the monies into the Respondent's bank account, thereby engaging in conduct giving rise to a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client.

**Allegation #2 – The Respondent Authorized the Use of Bank Accounts and Credit Cards by MB**

24. As described in greater detail below, between December 2011 and April 2014, the Respondent authorized MB to use the Respondent's personal bank accounts and credit cards for various purposes, including in relation to the operation of the Travel Business.

25. In or about August 2011, the Respondent opened a bank account in the Respondent's name for the exclusive use of MB (the "MB Account"). The Respondent opened the MB Account to assist MB, who told the Respondent that she could not open a bank account of her own because she was not a Canadian resident.

26. At all material times, the Respondent held a joint bank account with the Respondent's spouse (the "Respondent Account").

27. The Respondent authorized and/or permitted MB to use the MB Account and the Respondent Account in relation to the operation of the Travel Business.

28. Between January 5, 2012 and March 31, 2014, the MB Account and the Respondent Account were used to process at least 42 transactions, totaling approximately \$72,203, in relation to the Travel Business.

29. Between January 4, 2012 and March 14, 2014, the Respondent authorized and/or permitted MB to process 95 charges, totaling \$110,233.93, on the Respondent's credit cards in respect of travel tickets purchases and travel expenses for the Travel Business, as described below:

<b>Credit Card</b>	<b>Dates</b>	<b># of Transactions</b>	<b>Description</b>	<b>Amount</b>
PC MasterCard	January 4, 2012 to April 2, 2012	2	Travel ticket purchases	\$3,446.96
TD Visa	January 23, 2012 to March 14, 2014	44	Travel ticket purchases and travel expenses	\$45,876.18
BMO MasterCard	December 1, 2012 to February 14, 2014	49	Travel ticket purchases and travel expenses	\$60,910.79
Total		95		\$110,233.93

30. Between March 7, 2012 and Jan. 16, 2014, a total of \$78,404.91 was withdrawn from the MB Account to make payments to the Respondent's credit cards.

31. As stated above, MB conducted fraudulent activities through the Travel Business. The Respondent unknowingly facilitated these fraudulent activities by authorizing and/or permitting MB to use the Respondent's personal bank accounts and credit cards to operate the Travel Business.

32. At all material times, the Respondent ought to have known that permitting MB to use the Respondent's personal bank accounts and credit cards concealed MB's involvement in the Travel Business and the receipt of monies from consumers and investors in respect of the business.

33. By virtue of the foregoing, the Respondent engaged in conduct or practice which is unbecoming or detrimental to the public interest.

### **Additional Factors**

34. The Respondent self-reported her relationship with MB to her dealer.

35. Prior to when the Respondent learned of MB's fraudulent conduct, the Respondent considered MB to be a trusted personal friend.

36. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct set out above and, in fact, the Respondent was never repaid monies by MB.

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

38. The sanctions imposed are significant to the Respondent, who is only 35 years of age and has two young children.

39. 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.

## **CONTRAVENTIONS**

40. The Respondent admits that in or about May 2013, the Respondent accepted a \$20,000 bank draft from a client payable to the Respondent personally, and deposited the monies into the Respondent's bank account, in order to facilitate the client's investment in a discount travel ticket business, thereby engaging in conduct giving rise to a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4, 2.4.2, 2.5.1, 1.1.2, and 2.1.1.

41. The Respondent admits that between December 2011 and April 2014, the Respondent authorized and/or permitted an individual to use the Respondent's personal bank accounts and credit cards to operate a discount travel ticket business which was subsequently determined to be fraudulent, thereby engaging in conduct or practice which is unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1.

## **TERMS OF SETTLEMENT**

42. The Respondent agrees to the following terms of settlement:

- a) the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member shall be suspended for 18 weeks, commencing on the date this Settlement Agreement is accepted by the Hearing Panel pursuant to section 24.1.1(c) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$10,000, payable in 10 monthly instalments of \$1,000 each, commencing one month from the date this Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$5,000, on or before the date set for the Settlement Hearing, pursuant to section 24.2 of MFDA By-law No. 1;

- d) the Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4, 2.4.2, 2.5.1 and 1.1.2; and
- e) the Respondent will attend in person on the date set for the Settlement Hearing.

#### **STAFF COMMITMENT**

43. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

#### **PROCEDURE FOR APPROVAL OF SETTLEMENT**

44. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

45. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive her rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

46. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA By-law No. 1.

47. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against her.

#### **FAILURE TO HONOUR SETTLEMENT AGREEMENT**

48. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

#### **REASONS FOR DECISION**

8. Staff made submissions regarding the suitability of the penalties which had been agreed to in the Settlement Agreement. In support of its application for approval, Staff made reference to the numerous matters which Hearing Panels have long considered when deciding whether a proposed statement should be accepted as follows:

- 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.

*In the Matter of Rodney Jacobson*, [2007] MFDA Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Decision dated July 13, 2007 (“*Jacobson*”) at pp. 9 and 12.

*In the Matter of Investors Group Financial Services*, [2004] MFDA Hearing Panel of the Ontario Regional Council, MFDA File No. 200401, Reasons for Decision dated December 16, 2004 at pp. 2-3.

*In the Matter of IQON Financial Inc. (Re)*, [2007] MFDA Hearing Panel of the Pacific Regional Council, MFDA File No. 200713, Decision and Reasons dated May 24, 2007 at p. 9.

9. Staff submitted that it would be in the public interest for the Hearing Panel to accept the Settlement Agreement, having in mind that the primary goal of securities regulation is the protection of the investor.

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

10. Staff went on to urge the Hearing Panel not to interfere lightly with a negotiated settlement as long as the penalties agreed are within the reasonable range of appropriateness given the conduct of the Respondent. The primary basis for this submission was that it is in the public interest in facilitating early resolution of such matters which are harmful to the public perception of the industry, thereby fostering confidence in the regulatory regime. The force of this submission is unquestioned and more than justifies a usual *prima facie* disinclination on the part of hearing panels to interfere with the completion of such settlements.

11. Staff referred the Hearing Panel to the recent decision of the Supreme Court of Canada in *R. v. Anthony-Cook*, [2016] S.C.J. No. 43 which raises, at the very least, new considerations for MFDA hearing panels when considering approvals of settlement agreements. The decision is that of Justice M. J. Moldaver, speaking for the Court, and arises from a joint submission on sentence by the Crown and the accused in a manslaughter case. The trial judge, upheld by the British Columbia Court of Appeal, applied a “fitness of sentence” test.

12. Justice Moldaver considered the fitness test in its various formulations and rejected them as not being suited to the “unique considerations that apply when assessing the acceptability of a joint submission”:

Having considered the various options, I believe that the public interest test, as amplified in these reasons, is the proper test. It is more stringent than the other tests proposed and it best reflects the many benefits that joint submissions bring to the criminal justice system and the corresponding need for a high degree of certainty in them. Moreover, it is distinct from the “fitness” tests used by trial judges and appellate courts in conventional sentencing hearings and, in that sense, helps to keep trial judges focused on the unique considerations that apply when assessing the acceptability of a joint submission. To the extent *Douglas* holds otherwise, I am respectfully of the view that it is wrongly decided and should not be followed.

13. Justice Moldaver held that the correct test to be applied was whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest. He said, at paragraph 34, as follows:

In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold – and for good reason, as I shall explain.

14. The explanation was summarized at paragraph 42:

Hence, the importance of trial judges exhibiting restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. A lower threshold than this would cast the efficacy of resolution agreements into too great a degree of uncertainty. The public interest test ensures that these resolution agreements are afforded a high degree of certainty.

15. While the *Anthony-Cook* case arose from a Criminal Code prosecution, Justice Moldaver made it clear that the newly formulated public interest test applied to the administration of justice at large, which would seem to include regulatory bodies such as MFDA hearing panels. In any event it is consistent with the MFDA jurisprudence, albeit taking it another step.

16. As will be discussed below, the penalties imposed in the present case are obviously so well within the bounds of what would be regarded as just and reasonable that to reject the agreed resolution would be certain to offend the higher threshold promulgated by Justice Moldaver to the effect that joint submissions are to be approved unless they are ones that would bring the administration of justice into disrepute.

17. We have concluded that the proper way to employ the test in *Anthony-Cook* is to first carry out the analysis which has heretofore been the norm for MFDA hearing panels when asked to approve a settlement agreement. If as a result of that exercise the hearing panel concludes that the settlement agreement should be approved, then it should not be necessary to ask the question whether the proposed penalty would be viewed by a reasonable and informed person as a

breakdown in the functioning of the regulatory regime or otherwise contrary to the public interest.

18. On the other hand, if the result of the analysis is a conclusion that applying the traditional criteria as, for example, those listed in paragraph 8 above, results in a conclusion that the approval is not warranted, then the hearing panel must go the next step and ask whether granting approval nonetheless would lead a reasonable, informed person to conclude that the proper functioning of the justice system had broken down. If found, then and only then may approval of the settlement agreement be withheld.

19. Factors that hearing panels heretofore have frequently considered when determining whether a penalty is appropriate include the following:

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

*In the Matter of Arnold Tonnies* [2005] MFDA Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Decision dated June 27, 2005 at p. 23.

*In the Matter of Stephan Headley*, [2006] MFDA Hearing Panel of the Ontario Regional Council, MFDA File No. 200509, Decision and Reasons dated February 21, 2006 at pp. 25-26.

20. An additional source of matters to be taken into account when determining the appropriate penalties to be imposed in disciplinary proceedings is the MFDA Penalty Guidelines. The Penalty Guidelines are intended to assist hearing panels, Staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. As stated in the introduction to the Penalty Guidelines under the heading “Purpose Of The MFDA Penalty Guidelines”:

***Range is Guideline Only***

The penalty types and ranges stated in the Guidelines are not mandatory. The Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are intended to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances but are not binding on a Hearing Panel.

*Extract from the MFDA Penalty Guidelines, Staff’s Book of Authorities, Tab 13.*

21. It appears that the Settlement Agreement has taken into account the important factors from the foregoing lists in arriving at the agreed penalties set out in the Settlement Agreement as follows:

**(a) Nature of the Misconduct**

22. The Respondent’s misconduct was serious.

23. In or about May 2013, the Respondent accepted a \$20,000 bank draft from a client payable to the Respondent personally, and deposited the monies into the Respondent's bank account, in order to facilitate the client's investment in a discount travel ticket business (the "Travel Business"). The Travel Business was not an investment which was known to or approved by the Member.

Settlement Agreement, paras. 17, 19, 22, 23, 40.

24. Between December 2011 and April 2014, the Respondent authorized and/or permitted an individual to use the Respondent's personal bank accounts and credit cards to operate the Travel Business which was subsequently determined to be fraudulent. The Respondent ought to have known that permitting the individual to use the Respondent's personal bank accounts and credit cards concealed the individual's involvement in the Travel Business and the receipt of monies from consumers and investors in respect of the Travel Business.

Settlement Agreement, paras. 24, 25, 27-30, 41.

**(b) The Respondent's Past Conduct and Level of Activity in the Capital Markets**

25. Since December 2, 2011, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with PFSL Investments Canada Ltd.

Settlement Agreement, para. 6.

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

Settlement Agreement, para. 37.

**(c) The Respondent's Recognition of the Seriousness of her Misconduct**

27. The Respondent's admission to the misconduct described in the Settlement Agreement indicates that she recognizes the seriousness of the misconduct. By entering into a Settlement

Agreement, the Respondent has accepted responsibility for her misconduct and saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegation.

Settlement Agreement, para. 39.

**(d) Client Harm**

28. Client BL advises that she received monthly interest payments in respect of her investment in the Travel Business from June 2013 until January 2014. Client BL advises that she was not repaid the principal (\$20,000) of her investment in the Travel Business.

Settlement Agreement, paras. 20, 21.

**(e) The Benefits Received by the Respondent**

29. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct. In fact it was established during the hearing that the Respondent suffered a loss as the debit owing on her bank accounts was never repaid. Staff put this amount at approximately \$15,000.

Settlement Agreement, para. 36.

**(f) Previous Decisions Made in Similar Circumstances**

30. The penalty proposed in the Settlement Agreement is consistent with previous decisions made in similar circumstances.

*In the Matter of Barry Raymer*, [2009] MFDA Hearing Panel of the Central Regional Council, MFDA File No. 200835, Reasons for Decision dated July 24, 2009 at paras. 1, 6.

*In the Matter of Brian Edward Mark Nerdahl*, [2010] MFDA Hearing Panel of the Central Regional Council, MFDA File No. 200806, Reasons for Decision dated July 15, 2010 at paras. 3-6.

*In the Matter of Wayne Larson*, [2009] MFDA Hearing Panel of the Prairie Regional Council, MFDA File No. 200826, Reasons for Decision dated October 14, 2009 at pp. 21, 25-29.

**CONCLUSION**

31. The Hearing Panel agrees with Staff’s submission that the proposed penalties are reasonable and proportionate having regard to the conduct of the Respondent and the circumstances of this case and that the settlement is in the public interest and it so finds.

**DATED** this 18<sup>th</sup> day of March, 2017.

“John Lorn McDougall”

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John Lorn McDougall, QC  
Chair

“Colleen Waring”

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Colleen Waring  
Industry Representative

“Joe Yassi”

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Joe Yassi  
Industry Representative

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