



File No. 200712

**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: RODNEY JACOBSON**

**DECISION**

**Hearing: June 11, 2007 at Calgary, Alberta**

**Hearing Panel Decision: July 13, 2007**

**Hearing Panel:**

Alan V.M. Beattie, Q.C. - Chair  
Erwin Granson - Industry Representative  
Richard R. Sydenham - Industry Representative

**Counsel:**

For the MFDA  
Shelly Feld  
  
For the Respondent  
D. Brian Foster

**Appearing:**

(The Respondent did not attend.)

**Present:**

Yvette MacDougall - MFDA Hearings Coordinator

## **HEARING PANEL DECISION**

### **(SETTLEMENT AGREEMENT)**

A Settlement Agreement was entered into in May, 2007 between Rodney Jacobson (“the Respondent”) and the Mutual Fund Dealers Association of Canada (“the MFDA”) pursuant to the MFDA’s By-law No. 1, Section 24.4.

In the Settlement Agreement the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined as an Approved Person of the MFDA, pursuant to ss.20 and 24.1.1 of By-law No.1.

At the commencement of the Hearing, the Hearing Panel granted a joint motion by Counsel to move the proceedings “in camera”.

### **AGREED FACTS**

The Settlement Agreement includes the following agreed facts:

#### **Registration History**

5. The Respondent was registered as a mutual fund salesperson in Alberta from May 1990 to January 2007. He was an Approved Person with Portfolio Strategies Corporation (“PSC”) from November 2001 until January 2007 when he was terminated by PSC substantially on the basis of the conduct described below.

6. PSC is registered as a mutual fund dealer in Alberta, British Columbia, Manitoba, Ontario and Saskatchewan and has been a Member of the MFDA since February 8, 2002.

#### **Misappropriation Of Funds From GL**

7. GL is an unsophisticated investor.

8. Prior to working at PSC, the Respondent worked at a national bank as a mutual fund salesperson and Manager of Personal Banking. The Respondent met GL and his wife ML more than 15 years ago when the Respondent was working at a national bank. Beginning at that time, GL and ML maintained their investment accounts with the Respondent.

9. In October 2003, when GL was 71 years old, ML passed away. Prior to her death, ML had taken primary responsibility for managing the finances of the couple.

10. In December 2003, the Respondent advised GL that in order to maintain his standard of living, GL would have to make investments that would generate a higher amount of income than GL was accustomed to receiving from his mutual fund investments.

11. The Respondent represented to GL that he had a non-mutual fund investment opportunity in mind for GL. The Respondent did not identify the proposed investment by name and did not provide GL with any written disclosure concerning the investment. The Respondent advised GL to make a \$20,000 investment and claimed that this investment would generate a return of \$1,000 per month which could be applied towards GL's monthly living expenses.

12. The Respondent did not actually have a non-mutual fund investment product in mind for GL to purchase.

13. In accordance with the Respondent's directions, GL gave the Respondent two \$10,000 cheques with a blank payee line on each cheque. The Respondent filled in the payee line and made the cheques payable to the Respondent's holding company Investment Plus Inc. The Respondent deposited the cheques into a bank account held in the name of Investment Plus Inc. (the "Investment Plus Inc. bank account"), thereby misappropriating the funds.

14. The Respondent never informed GL that Investment Plus Inc. was his own company or that the proposed investment would not be processed through the facilities or recorded on the books and records of PSC.

15. The Respondent also failed to disclose any information to PSC about an off-book investment arrangement with GL prior to presenting this arrangement to GL.

16. By depositing investment funds obtained from GL in his Investment Plus Inc. bank account, the Respondent misappropriated the money he obtained from GL and breached the policies and procedures of PSC and MFDA Rules 2.1.1 and 3.3.1.

17. The Respondent did not document the terms of the arrangement with GL and no record was made in GL's client file acknowledging that the Respondent had received \$20,000 from GL.

18. Between December 2003 and August 2004, the Respondent used the funds misappropriated from GL for his personal benefit. Part of the money was used to offset the overdraft on one of the Respondent's bank accounts.

19. In spite of repeated inquiries from GL concerning the status of his investment and the income payments that GL expected to receive, the Respondent continued to mislead GL and perpetuated GL's belief that his money was invested in a legitimate non-mutual fund investment. As described in more detail below, the Respondent also purchased and provided money orders to GL to address GL's concerns that income payments due on the investment were in arrears.

### **Discretionary Trading For GL**

20. Initially, in response to GL's inquiries about overdue income payments, the Respondent purchased money orders with his own money and used the money orders to make unauthorized mutual fund purchases in GL's mutual fund account.

21. On March 31, 2004, without contacting GL, the Respondent purchased \$884 worth of mutual funds in the name of GL in GL's mutual fund account at PSC. On May 3, 2004, without contacting GL, the Respondent purchased \$442 worth of mutual funds in the name of GL. In order to process the transactions, the Respondent used blank signed forms that he had previously obtained from GL.

22. The Respondent used money orders to pay for the mutual funds that he purchased in GL's name in order to conceal from PSC that the Respondent was the purchaser.

23. In June and July 2004, after receiving further inquiries from GL about the status of the income payments due on his investment, the Respondent used his own money to purchase and provide GL with two additional money orders payable to GL personally, both in the amount of \$442.

24. In July 2004, GL and his daughter met with the Respondent and complained about the handling of GL's purported investment and the fact that income payments remained in arrears. GL and his daughter demanded reimbursement of the \$20,000 investment.

25. Following his July 2004 meeting with GL and his daughter, the Respondent did not inform PSC about GL's complaint.

26. On August 13, 2004, the Respondent did not reimburse \$20,000 to GL as GL had requested but the Respondent did purchase \$18,381.42 worth of mutual funds in the name of GL in GL's mutual fund account at PSC. This mutual fund purchase was made without the instructions, authorization or approval of GL. The Respondent processed the transaction by using blank signed forms that he had previously obtained from GL.

### **GL's Complaint**

27. Upon receipt of a trade confirmation for the mutual fund purchase processed in his account on August 13, 2004, GL complained to PSC by phone. GL was upset because:

- (a) he had not authorized the August 13, 2004 mutual fund purchase;
- (b) the value of the transaction was less than the \$20,000 reimbursement he expected; and
- (c) he believed that the income payments that the Respondent promised on his investment remained in arrears.

28. PSC told GL that there was no merit to his concerns.

29. On October 5, 2004, GL submitted a written complaint about the Respondent's conduct to the MFDA.

## **Misappropriation of Funds From TM**

30. The Respondent became TM's financial advisor close to 20 years ago when the Respondent was a manager at the bank. TM trusted the Respondent to make appropriate investment decisions for him. TM's work commitments often result in absences from home for months at a time.

31. On July 30, 2004, TM met with the Respondent and provided the Respondent with a cheque in the amount of \$35,000 and asked the Respondent to invest the money in mutual funds on his behalf. This meeting occurred a few days after GL asked the Respondent to return his \$20,000 investment.

32. On July 30, 2004, the Respondent deposited TM's \$35,000 cheque into the Investment Plus Inc. bank account, thereby co-mingling client money with his own money contrary to MFDA Rule 3.3.1.

33. Following his meeting with the Respondent, TM expected the Respondent to invest the \$35,000 in mutual funds for TM but TM and the Respondent did not discuss which specific mutual funds TM's money would be invested in or how the money would be allocated. The Respondent never informed TM that he was going to deposit TM's cheque in the Investment Plus Inc. bank account.

34. The Respondent also failed to disclose to PSC that he had deposited funds obtained from TM in the Investment Plus Inc. bank account.

35. By depositing the \$35,000 cheque into the Investment Plus Inc. bank account, the Respondent breached the policies and procedures of PSC and MFDA Rules.

36. Of the \$35,000 deposited into the Investment Plus Inc. bank account, the Respondent used \$15,000 to purchase mutual funds in the name of TM as described in paragraphs 41-42 below. \$20,000 was retained by the Respondent for his personal use and was thereby misappropriated. On August 13, 2004, the Respondent used \$18,381.42 of the \$20,000 that he retained to purchase mutual funds in GL's mutual fund account at PSC in order to 'reimburse' GL as described in paragraph 26 above.

37. The Respondent did not inform TM that he was holding \$20,000 of TM's money and TM did not authorize the Respondent to retain his money for the Respondent's personal use. No record was made in TM's client file acknowledging that the Respondent was holding \$20,000 obtained from TM.

38. Between July 30, 2004 and November 2, 2004, the Respondent did not repay TM or inform TM that he had applied funds obtained from TM to his personal use.

39. On November 2, 2004, after the MFDA investigation into the Respondent's conduct was commenced, the Respondent borrowed funds from his line of credit to reimburse TM with interest by purchasing mutual funds in TM's name as described in paragraph 44 below.

40. Even after reimbursing TM, the Respondent did not inform TM that he had applied funds received from TM on July 30, 2004 to his personal use and had not immediately purchased mutual funds on behalf of TM as TM had expected.

### **Discretionary Trading For TM**

41. On August 5, 2004, the Respondent used \$15,000 of the \$35,000 that he had received from TM to purchase mutual funds for TM. In order to process the transaction, the Respondent used a blank signed form that he had previously obtained from TM.

42. Prior to making the August 5, 2004 mutual fund purchased on behalf of TM, the Respondent had not obtained instructions from TM concerning which mutual funds to purchase, the amount of each mutual fund to purchase, or the date when the trades were to be processed.

43. On October 21, 2004, PSC received written notification from the MFDA about GL's complaint and asked the Respondent to provide a written response to the complaint.

44. On November 2, 2004, before providing PSC and the MFDA with a written response to GL's complaint, the Respondent purchased mutual funds for TM's account in order to reimburse TM for the funds that the Respondent had misappropriated from him. This mutual fund purchase was made without the knowledge or approval of TM. The Respondent processed the transaction by using blank signed forms that he had previously obtained from TM.

### **The Respondent Deliberately Misled PSC and MFDA Staff**

45. By letter dated November 4, 2004, the Respondent provided PSC and the MFDA with a response to the complaint that GL had submitted to the MFDA.

46. The Respondent's November 4, 2004 letter to the MFDA made no reference to the fact that the Respondent had deposited money obtained from GL in the Investment Plus Inc. bank account and did not describe how he had actually handled money that he obtained from GL and TM as set out above. Instead, the Respondent's letter challenged the credibility of GL's complaint by asserting that GL was frequently confused and had difficulty keeping track of and understanding his financial affairs.

47. By letter dated November 16, 2004, the MFDA made follow-up inquiries to PSC concerning GL's complaint about the Respondent.

48. In response to the follow-up inquiries from MFDA Staff, the Respondent disclosed for the first time to PSC and the MFDA that he maintained a holding company called Investment Plus Inc. and had deposited funds obtained from GL and TM into the Investment Plus Inc. bank account.

49. By letter dated November 30, 2004, PSC and the Respondent took the position that the Respondent had used Investment Plus Inc. as a temporary vehicle for the benefit of the clients to assist them by providing "a money management service off-book" to meet their income needs. The Respondent implied that both clients had authorized him to deposit their money into his Investment Plus Inc. bank account.

50. On February 22, 2006, the Respondent attended an interview with MFDA Staff to provide information respecting the matters under investigation.

51. During his interview with MFDA Staff, the Respondent made false statements as to how and why his arrangements to hold investment funds obtained from GL and TM in his bank accounts came about and the manner in which these arrangements were administered. He stated falsely that TM was aware that his money was being held in the Respondent's bank accounts and that it was documented in the client files of GL and TM that the Respondent was in possession of their investment funds.

The Settlement Agreement includes the following agreed sections entitled "The Respondent's Position", "Contraventions", and "Terms of Settlement":

### **THE RESPONDENT'S POSITION**

The Respondent has been in the financial services industry for many years and has not been the subject of any prior client complaints and has not been the subject of any prior disciplinary review. There is no evidence that he did not act in the best interests of his clients, except for the impugned transactions described above.

At the time of the impugned transactions, the Respondent had two medical conditions that may have impacted his judgment. In the summer of 2003 the Respondent had significant back pain and was prescribed morphine by his doctor. The morphine was taken in increasing amounts until corrective treatment occurred in February or March of 2004 at which time the morphine medication was no longer taken by the Respondent. The Respondent's family doctor, Dr. Wood, has confirmed that the use of morphine could have clouded the Respondent's judgment.

In addition to the potential impact of the use of morphine, the Respondent has suffered chronic depression. His depression became far more significant by the fall of 2004 at which time he began to experience more severe psychiatric symptoms. Depression can affect a person's judgment.

All funds of the clients have been returned and no client suffered a permanent financial loss. The Respondent received no significant benefit from the transactions.

Since November 30, 2004, the Respondent has co-operated with the MFDA by disclosing all records within his control relating to the impugned transactions including all of the banking records for his personal bank accounts, his line of credit and the Investment Plus Inc. bank account.

The Respondent is no longer employed in the investment industry. He is at present suffering health problems related to depression and is unemployed. He has limited means.

The Respondent has suffered greatly for an error that has caused the loss of his career and has impacted his health.

## **CONTRAVENTIONS**

The Respondent admits that between December 2003 and November 2004, he failed to deal fairly, honestly and in good faith with clients, acted contrary to the public interest and contravened MFDA Rules 2.1.1 and 3.3.1 by depositing the total amount of approximately \$55,000 obtained from clients GL and TM into his Investment Plus Inc. bank account, and misappropriating amounts, as described above.

The Respondent admits that he used blank signed forms previously obtained from GL and TM to process mutual fund transactions in their mutual fund accounts at PSC without obtaining appropriate instructions or authorization from GL or TM at the time of the trades, thereby engaging in discretionary trading, acting contrary to the public interest and MFDA Rule 2.1.1© and engaging in conduct outside the scope of the Respondent's registration category as a mutual fund salesperson.

The Respondent admits that he provided false and misleading statements to MFDA Staff concerning his conduct with respect to GL and TM during the course of the MFDA investigation into the Respondent's conduct and thereby breached his obligations under s.22 of MFDA By-law No.1 and acted contrary to the public interest in contravention of MFDA Rule 2.1.1(c).

## **TERMS OF SETTLEMENT**

The Respondent agrees to the following terms of settlement:

- (a) A permanent prohibition of the authority of the Respondent to conduct securities related business in any capacity; and
- (b) A fine in the amount of \$15,000.

## **SUBMISSIONS OF COUNSEL**

### **MFDA**

Mr. Feld, Enforcement Counsel for the MFDA, and Mr. Foster, Counsel for the Respondent, recommended acceptance of the Settlement Agreement by the Panel. Mr. Feld made the following submissions on behalf of MFDA Staff:

1. Staff is satisfied that the penalties proposed for the Respondent in this proceeding are commensurate with the conduct described in the Settlement Agreement.

2. Taking into account the factors set out below, it is in the public interest for the Hearing Panel to accept the proposed Settlement Agreement.

3. The proposed Settlement Agreement and penalties are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by its Members and Approved Persons.

4. In past cases, MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

- a) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalties 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;
- g) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

*Investors Group Financial Services* (2005) MFDA Ontario Regional Council, File No.200401 at pp.2-4.

*Zollo* (2007) MFDA Ontario Regional Council, File No.200610 at pp.2-3.

5. A Hearing Panel should also consider what impact the proposed penalties will have on the Respondent.

*M.C.J.C. Holdings and Cowpland* (2002), 25 O.S.C.B. 1133 at pp.4-5 (Ontario Securities Commission)

*Theberge* (2001), 24 O.S.C.B. 4033 at p.2 (Ontario Securities Commission)

6. A Hearing Panel would not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within the reasonable range of appropriateness given the conduct of the Respondent.

*Investment Dealers Association and Clark* (1999) I.D.A.C.D. No.40 at p.3-4.

*Theberge* (above)

*Investment Dealers Association and Milewski* (1999) I.D.A.C.D. No.17 p.11.

7. 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 per Iacobucci J. at paras.59, 68.

*Parkinson* (2005) MFDA Ontario Regional Council, File No.200501, at p.20.

8. MFDA Hearing Panels have consistently held that misappropriation of client funds by an Approved Person is dishonest conduct which is inconsistent with the standard of conduct set out in MFDA Rule 2.1.1 and warrants a permanent prohibition on the authority of such Respondents to conduct securities related business.

*Parkinson*, above, at p.23

*Brown-John*, (2005) MFDA Pacific Regional Council, File No.200502, at p.5.

*Anderson*, (2006) MFDA Prairie Regional Council, File No.200508, at p.4.

9. In previous cases involving misappropriation of client funds, MFDA Hearing Panels have imposed fines that are at least equal to the amount that the Respondent has obtained from clients and failed to return.

*Parkinson* (above)

*Brown-John* (above)

*Anderson* (above)

10.. In the present case, in spite of the fact that the Respondent made full restitution to clients, including interest, following the discovery of his misconduct, if this Settlement Agreement is accepted, the Respondent will pay a fine in the amount of \$15,000. The fine will advance the objective of ensuring that individuals who engage in misconduct do not profit or benefit from their misconduct. It is submitted that in the circumstances of this case, the fine is reasonable and proportionate having regard to the conduct of the Respondent, the fact that full restitution was made to clients and taking into account the Respondent's present circumstances.

11. The Respondent's admissions to the misconduct described in the Settlement Agreement reflect acceptance of responsibility for his misconduct and have avoided the need for a lengthy hearing at considerable additional expense to the MFDA, and ultimately the membership of the MFDA.

### **THE RESPONDENT**

Mr. Foster, in brief submissions recommending that the Settlement Agreement should be accepted, submitted that the proposed penalties are proportionate and appropriate and meet the objectives of the MFDA. The lifetime prohibition will send a strong message. The Respondent has cooperated fully to avoid a long and costly investigation and hearing.

## **DECISION**

We accept the submissions of Counsel (above) and confirm our decision, given at the conclusion of the Hearing, that the Settlement Agreement is accepted. We signed an Order that the Settlement Agreement is accepted by all the Panel Members. In our view the permanent prohibition of the Respondent to conduct securities related business in any capacity, and the fine of \$15,000, fall within the reasonable range established in the decisions.

Dated: July 13, 2007

“Alan V.M. Beattie”

Alan V.M. Beattie, Q.C. - Chair

“Erwin Granson”

Erwin Granson - Industry Representative

“Richard R. Sydenham”

Richard R. Sydenham - Industry Representative

Doc #116266