



**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: Anu Bala Jain**

Heard: February 27, 2012 in Toronto, Ontario  
Reasons for Decision: March 14, 2012

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Susan L. Schulze	Industry Representative

Appearances:

Shelly Feld	)	Counsel, Mutual Fund Dealers Association of
	)	Canada (“MFDA”)
Dorothy Hagel	)	Counsel for the Respondent, Anu Bala Jain
Anu Bala Jain	)	Respondent

1. By Notice of Settlement Hearing dated February 17, 2012, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened to consider whether pursuant to Section 24.4 of By-law No. 1 of the MFDA, the Panel should accept a Settlement Agreement, dated February 15, 2012, entered into by the Staff of the MFDA and the Respondent, Anu Bala Jain.

2. At the outset of the proceedings, we considered a joint Motion by Staff and the Respondent to move the proceedings “in camera”. We granted that motion. We then considered the provisions of the Settlement Agreement aided by submissions as to the applicable law which should guide this Panel in determining whether to accept or reject the Settlement Agreement.

### **The Allegations**

3. In the Settlement Agreement, the Respondent admits that:

(a) between September 2007 and February 2008, she allowed MRM, an unregistered individual, to:

- i) open new accounts at the Member for 18 individuals with whom the Respondent never met;
- ii) recommend and implement leveraging strategies for these clients; and
- iii) recommend and process trades in the accounts of these clients using the Respondent’s representative code;

thereby:

- A) facilitating stealth advising by MRM, contrary to MFDA Rules 1.1.1(c) and 2.1.1;
- B) failing to ensure that she (the Respondent) performed the necessary due diligence to learn the essential facts relative to the clients and failing to ensure that the investments and the leveraging strategies were suitable and appropriate for the clients, contrary to MFDA Rules 2.2.1 and 2.1.1; and
- C) failing in her (the Respondent’s) capacity as a branch manager to ensure that business conducted at the branch was in compliance with MFDA By-laws, Rules and applicable legislation, contrary to MFDA Rules 2.5.3(b)(i) and 2.1.1.

(b) Between May 26, 2010 and April 14, 2011, in response to a complaint by client MA, in respect of whom the Respondent was identified as the Approved Person responsible for servicing client MA's accounts, the Respondent made false and misleading statements and omitted to provide other relevant information during the course of investigations by two Members and by MFDA Staff:

- i) in a written statement to MFDA Staff, dated June 3, 2010;
- ii) in oral statements to compliance staff at two Members; and
- iii) by preparing notes of three meetings with client MA in October 2007 which had not in fact occurred;

contrary to MFDA Rule 2.1.1 and s. 22.1 of MFDA By-law No. 1.

4. We heard submissions from Staff and counsel for the Respondent concerning the facts of this matter and as to why this particular Settlement Agreement should be accepted by the Panel. After deliberation we unanimously concluded that it was appropriate to accept the Settlement Agreement.

### **The Facts**

5. At the time of the events under consideration, the Respondent was employed by Global Maxfin. A complaint had been made by one MA to the Ontario Securities Commission as to the conduct of the Respondent. By the time the complaint had been received, the Respondent was no longer an Approved Person with Global Maxfin as she had transferred to Queen Financial Group Inc. ("Queen Financial").

6. On May 26, 2010, at a meeting at Global Maxfin's office, the Respondent denied the allegations in MA's complaint and in fact she insisted that she had met with the client on three occasions. As evidence of those meetings she produced copies of handwritten notes from her client file. Further investigation involving the client MA revealed that he had not met the Respondent and certain documents, including emails, were produced which indicated clearly that the Respondent was not involved in any meetings or activities on behalf of MA. Global Maxfin

contacted additional clients and confirmed that they had met with another person and not the Respondent when they opened their accounts and implemented the leveraging strategies that had been recommended by a third party. When questioned by Queen Financial as to her activities she denied that she had participated in a stealth advising arrangement.

7. The MFDA conducted an investigation in May of 2010. The Respondent's response to the MFDA is found in a three page document. The Respondent described MA's allegations as "completely baseless, shocking to me and an attempt to tarnish my image". Finally, on April 14, 2011, at a meeting with the MFDA, the Respondent reversed her earlier denial and admitted to the conduct described in Allegation #1 above. Following discussion between MFDA staff and Queen Financial on May 24, 2011, the Respondent was suspended as a branch manager pending outcome of the MFDA investigation.

#### **Acceptance of the Settlement Agreement**

8. As a Panel, we are obviously concerned with this type of conduct, however, we believe that the Settlement Agreement fairly addresses those concerns.

9. In determining whether the Settlement Agreement should be accepted, we have considered a number of factors. These include the following:

- (a) 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 which is set out 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 Mutual Fund Dealers Association of Canada.

(g) finally, whether the Settlement Agreement will foster confidence in the regulatory process itself.

10. We believe that each and every one of these factors is dealt with in an appropriate fashion by the Settlement Agreement.

### **Submissions as to Penalty**

11. Counsel for the MFDA, in a very careful, thoughtful and fair submission, confirmed a number of matters before the Panel: There was no evidence of material harm to any clients; no clients have complained save and except MA; no clients have lost any funds or money; and, after her initial failure to disclose she made a full and complete statement and cooperated with the MFDA investigators.

12. The Respondent admits that she is responsible for her conduct. She states that she was influenced in her initial decision to deny MA's complaint as she was persuaded by MRM that she would lose her license if she admitted to the alleged conduct. She further states that she was also counseled to prepare the meeting notes to substantiate her claim that she had met with the client, and that MRM had drafted substantial portions of the letter response to the MFDA. She states that she panicked when hearing of the complaint, however, in retrospect, she deeply regrets the way in which she responded to the complaint.

13. Counsel for the Respondent submitted that there were a number of factors that should be considered as to the acceptance of the Settlement Agreement:

- (a) The Respondent clearly admits her contraventions.
- (b) The admissions by the Respondent reduced the cost and time involved in the process and led to certainty as to the procedures to be followed.
- (c) The fine represents a substantial penalty to the Respondent having consideration to her financial income and resources.
- (d) The Respondent has no past disciplinary history with the MFDA.
- (e) The Respondent's misconduct has not caused any financial loss to clients.

14. Counsel for the Respondent, in her careful submissions, confirmed that there was no malice or harm and that the Respondent was simply attempting to help a colleague who was in the insurance business. The Respondent continues to have many of the clients continuing with her. Although she was initially registered in May 2003, she gained very little experience as she essentially worked part-time until November 2006 when she started full-time. The Respondent is very remorseful about her conduct. She had no intention to defraud or harm the clients and acknowledges that this is very serious conduct and contends that the penalty that she has agreed to is proportional to the events and is a penalty which is very onerous for her considering her present circumstances.

15. For all of these reasons, and notwithstanding the conduct of the Respondent, we have concluded that the Settlement Agreement is reasonable. In our considerations we have been mindful of the words found in *Re Milewski*, [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. The Panel made these comments at page 9:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

### **The Penalty**

16. Accordingly, the following penalty (which is set out in detail in the Settlement Agreement at paragraph 53), is imposed upon the Respondent:

(a) Suspension for 1 year from the date of this Hearing;

- (b) Permanent prohibition from acting as a Branch Manager, Compliance Officer or in any other supervisory capacity for a Member of the MFDA;
- (c) A fine of \$20,000, being an immediate payment of \$7,500, the balance to be paid according to a specified schedule;
- (d) A continuing suspension beyond the 1 year for the amount of time that a payment is delinquent;
- (e) Costs in the amount of \$2,500;
- (f) Successful completion of the Conduct and Practices Handbook course (or other MFDA-approved course) prior to becoming re-licensed; and
- (g) An agreement to comply with all MFDA Rules in the future, should she become re-licensed.

17. After accepting the Settlement Agreement, we rescinded the “in camera” order and signed the Order as requested. We advised counsel that we would prepare brief reasons for our approval of the Settlement Agreement, which are set forth herein.

**DATED** this 14<sup>th</sup> day of March, 2012.

“John Webber”

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The Hon. John B. Webber, Q.C.,  
Chair

“Brigitte Geisler”

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Brigitte J. Geisler  
Industry Representative

“Susan Schulze”

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Industry Representative