



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: Michael Brandon Johns

Heard: June 4, 2010 in Toronto, Ontario
Reasons for Decision: June 11, 2010

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Edward Saunders, Q.C.
David W. Kerr
Guenther Kleberg

Chair
Industry Representative
Industry Representative

Appearances:

Charles Toth)	For the Mutual Fund Dealers Association of
)	Canada
Randy Bennett)	For the Respondent (Respondent attended
)	by telephone)
)	

1. The hearing of the allegations by the Mutual Funds Dealers Association of Canada (the “MFDA”) against the Respondent was scheduled to commence on June 2, 2010. At the outset of the hearing, the Panel was advised that a settlement had been reached. Accordingly the hearing was adjourned to June 4, 2010 for consideration of the Settlement Agreement by the Panel pursuant to Section 24.4 of By-law No. 1 of the MFDA.

2. By Amended Notice of Hearing dated November 12, 2009, the MFDA alleged against the Respondent the following violations of the By-laws, Rules and Policies of the MFDA:

Allegation #1: Between October 2003 and January 2006, the Respondent engaged in securities related business, which was not carried on for the account of the Member or conducted through the facilities of the Member, by recommending, selling, facilitating the sale, or making referrals in respect of the sale of Lighthouse Pointe Limited Partnership units (“Lighthouse LPs”) and Ashton Oaks Limited Partnership units (“Ashton LPs”) to clients, contrary to MFDA Rules 1.1.1 and 2.4.2.

Allegation #2: Between October 2003 and January 2006, the Respondent engaged in another occupation, which was not properly disclosed to and approved by the Member and not properly disclosed to clients, by recommending, selling, facilitating the sale, or making referrals in respect of the sale of Lighthouse LPs and Ashton LPs, contrary to MFDA Rules 1.2.1(d) and 2.4.2..

Allegation #3: Between October 2003 and January 2006, the Respondent recommended, sold, facilitated the sale, or made referrals in respect of the sale of Lighthouse LPs and Ashton LPs to clients without ensuring that:

- (a) the investments were suitable for the clients, and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1; and

(b) the clients qualified as accredited investors in accordance with Ontario Securities Commission Rule 45-501 and subsequently National Instrument 45-106, contrary to MFDA Rule 2.1.1, thereby engaging the jurisdiction of the Hearing Panel to impose a penalty on the Respondent pursuant to s. 24.1.1(h) of MFDA By-law No. 1

Allegation #4: Between October 2003 and January 2006, the Respondent failed to comply with the Member's policies and procedures with respect to the disclosure and approval of outside business activities, contrary to MFDA Rule 2.1.1.

3. The allegations against the Respondent have their source in referrals made by him in respect of the sale of partnership units in real property in the United States. The referrals involved 25 clients. The aggregate amount of sales resulting from the referrals was approximately \$1,070,500 (U.S.). At the time the Respondent was registered as a mutual fund salesperson with a Member of the MFDA. The partnership units were not investments which had been approved by the Member. The referrals were not carried out for the account of the Member and were not disclosed to it. In respect of these activities, the Respondent received compensation of approximately \$238,500 (U.S.).

4. Following an investigation and the issuance of the Notice of Hearing, the MFDA and the Respondent entered into a Settlement Agreement dated June 4, 2010. In paragraphs 18-20 of the Settlement Agreement, the Respondent admits the violations alleged in Allegation #1 and in paragraphs 21-24 the Respondent admits the violations alleged in Allegation #4. The contraventions are further admitted in paragraph 29. The Panel was advised that the MFDA was withdrawing Allegation #2 and Allegation #3.

5. In paragraph 30 of the Settlement Agreement, the Respondent agreed to the following terms of settlement:

(a) the Respondent shall for a period of 6 years be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, which prohibition does not extend to any securities related

business which the Respondent may engage in with Becksley Capital Inc. or any entity which is not an MFDA Member, pursuant to s. 24.1.1(e) of the MFDA By-law No. 1;

(b) the Respondent shall pay a fine in the amount of \$50,000.00 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, payable as follows:

- i. \$10,000.00 payable upon approval of the settlement;
- ii. \$10,000.00 payable on or before September 6, 2010;
- iii. \$10,000.00 payable on or before December 6, 2010; and
- iv. \$20,000.00 payable on or before June 6, 2011.

(c) the Respondent shall pay costs in the amount of \$1,000.00 pursuant to s. 24.2 of MFDA By-law No. 1, on or before June 6, 2011; and

(d) if the Respondent fails to comply with subparagraphs (b) or (c), then without further notice to the Respondent, the Respondent shall summarily be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, which prohibition does not extend to any securities related business which the Respondent may engage in with Becksley Capital Inc. or any entity which is not an MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.

6. At the outset of the hearing and at the request of the parties, the Panel ordered that the consideration of the Settlement Agreement hearing be held *in camera*. There were then submissions from counsel on various matters. Apart from one issue, the Panel had no concern with the terms of the Agreement. In particular, we did not consider harm to the clients as there was no evidence on that subject. The one issue that gave the Panel some concern was the question of the amount of the fine. The fine amounted to approximately 20% of the compensation received by the Respondent for his improper activities. However, it is noted that the amount of the fine was well over the amount suggested in the MFDA Guidelines. It is also noted that the fine is higher than the \$40,000.00 fine levied in a recent very similar case [re David Irwin, MFDA Central

Regional Council file no. 200915 – April 28, 2010]. We recognize that each case depends on its particular circumstances and that the amount has been agreed to after discussion between the parties. After deliberation, we see no reason to interfere with the Settlement Agreement as it is, in our view, within the reasonable range taking into account the settlement process and the fact that the parties have agreed to it. In our opinion the terms will provide a deterrent to others in the industry who may be considering similar activities.

7. As announced at the Hearing, we accept the settlement as being within the reasonable range of penalty terms.

DATED this 11th day of June, 2010.

“Edward Saunders”

The Hon. Edward Saunders, Q.C.,
Chair

“David Kerr”

David W. Kerr,
Industry Representative

“Guenther Klberg”

Guenther Kleberg,
Industry Representative