



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: Kenneth Brian Karasick

Heard: June 3, 2015, in Vancouver, British Columbia
Reasons for Decision: June 18, 2015

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Bradley Doney	Chair
Darlene Barker	Industry Representative
David Webb	Industry Representative

Appearances:

David Babin)	For the Mutual Fund Dealers Association of
)	Canada
)	
Brent MacLean)	For the Respondent
)	
)	

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 June 2, 2015, (the “Settlement Agreement”) between the MFDA and Kenneth Brian Karasick (the “Respondent”). Notice of the hearing had been published but not for the 10-day notice period required by the MFDA Rules.

2. The parties brought a joint motion for an order abridging the notice period. The Hearing Panel granted the motion.

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

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

- a) the Respondent pay a fine in the amount of \$10,000 pursuant to section 24.1.1(b) of By-law No. 1;
- b) the Respondent pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1;
- c) the Respondent is prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of one year pursuant to s. 24.1.1(e) of MFDA By-law No. 1
- d) the Respondent comply in future with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.1.1 and 2.1.4; and,
- e) 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 with 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

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

CONTRAVENTIONS

6. The Respondent admitted that:

- a) From March 16, 2009 to July 16, 2009, he accepted and held a power of attorney from client FM in favour of himself, contrary to MFDA Rule 2.3.1(a);
- b) From May 22, 2009 to July 11, 2012, he was designated as a beneficiary of client FM's in-trust account at the Member, thereby giving rise to a conflict or potential conflict of interest between client FM and the Respondent, which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rule 2.1.4;
- c) From July 2009 to January 2013, he engaged in personal financial dealings with client FM by accepting a monetary gift of \$309,474, thereby giving rise to a conflict or potential conflict of interest between client FM and the Respondent, which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1; and,
- d) He misled the Member by falsely answering the Member's Annual Consultant Certifications by stating that:
 - (i) in 2009, he did not hold a POA over any clients at the Member;
 - (ii) in 2011, he was not aware of being named as the beneficiary of a client's estate or any client account held with the Member; and
 - (iii) in 2009, 2010, 2011 and 2012, he had not received any monetary gifts from clients,

thereby interfering with the ability of the Member to supervise his conduct and comply with its obligation under MFDA Rule 2.1.4, contrary to MFDA Rules 1.1.2 and 2.1.1

THE MATERIAL FACTS

Registration History

7. From August 27, 1993 to March 14, 2013 the Respondent was registered as a mutual fund salesperson with Investors Group Financial Services Inc. (Member).

8. The Respondent is now 72 years old, retired, and has not been registered in the securities industry since March 14, 2013.

Background

9. In 1999, the Respondent met client FM when the Member assigned the Respondent client FM's accounts.

10. From 1999 to 2012 the Respondent developed a close personal relationship with client FM, who died in January 2012.

11. On July 13, 2012, Staff received a letter from SM, client FM's daughter and the administrator of her father's estate, alleging that the Respondent:

- a) held a power of attorney for client FM;
- b) had taken advantage of her father in setting up his in-trust account, naming himself as beneficiary of the account when client FM was allegedly not of sound mind at the time; and,
- c) had received a cash gift from client FM in 2009 upon the sale of his condominium.

12. The Respondent states that he did not take advantage of client FM whose interests were at all times protected by client FM's independent legal advisor. The in-trust account was established, by way of written instructions from, and managed by client FM's lawyer ("HE").

Conflict of Interest: Power of Attorney

13. In March 2009, client FM asked the Respondent to serve as his power of attorney to assist him selling his condominium and moving to a retirement home.

14. On or about March 16, 2009, the Respondent and client FM attended a notary public, engaged and instructed by client FM, at which time client FM granted the Respondent power of attorney, limited to the sale of the condominium, dealing with various government agencies and health care providers, arranging interim accommodations for client FM and finding client FM a suitable retirement home.

15. The Respondent held the power of attorney from about March 16, 2009 to July 16, 2009. The Power of Attorney was only used for the purpose it was granted and never exercised in relation to any of client FM's accounts at the Member.

16. At all material times, the Member's policies and procedures, consistent with MFDA requirements, prohibited Approved Persons from holding a power of attorney for a client, unless the client was an immediate family member.

17. The Respondent did not disclose to the Member that he had accepted and held a power of attorney prior to, during, or after having being granted it.

Conflict of Interest - In-Trust Account/Named Beneficiary

18. On May 22, 2009, client FM executed a Settlement Indenture between himself, as settlor, and HE, as initial trustee, in order to establish an in-trust account with the Member.

19. The Settlement Indenture, prepared by HE, named the Respondent as a beneficiary of the trust. Client FM's brother and another individual were named as beneficiaries in the event the Respondent predeceased client FM. The Respondent learned shortly after the execution of the Settlement Indenture that he had been named the primary beneficiary.

20. On May 25, 2009, HE sent a letter to the Member advising that client FM had established a trust and instructed the Member to transfer client FM's non-registered account investments into an in-trust account, to be managed by HE in his capacity as trustee. A copy of the Settlement Indenture was included with the letter.

21. On June 24, 2009, HE completed an account application form to open an in-trust account with the assistance of the Respondent. The account was completed in the name of "HE in trust for client FM Alter Ego Trust 2009". Client FM was identified as the beneficiary of the trust.

22. The Member reviewed and approved the account application documents and the in-trust account was opened on June 29, 2009. On June 30, 2009, the value of the in-trust account was \$759,185.15

23. The Respondent assumed the Member was aware of his designation as a beneficiary of the in-trust account because HE had included a copy of the Settlement Indenture with HE's initial letter to the Member on May 25, 2009. The Respondent did not himself independently disclose to his branch manager or compliance staff at the Member that he was a beneficiary of the in-trust account.

24. At all material times the Member's policies and procedures manual stated, "[Y]ou must not permit a client to name you as a beneficiary of his or her estate or of a particular Investors Group account".

25. On January 25, 2012, at or around the time of client FM's death, the Respondent advised the Member in writing that he had been named as the beneficiary of the in-trust account. The

Respondent did not accept any of the proceeds from the account, which went instead to client FM's children.

26. On May 17, 2012, the Member issued a warning letter to the Respondent for failing to comply with the Member's conflict of interest guidelines in relation to his designation as a beneficiary of the in-trust account.

Conflict of Interest - Monetary Gift from Client FM

27. On July 14, 2009, client FM gifted \$309,475 to the Respondent through a "Deed of Gift" that was signed by both client FM and the Respondent, and witnessed by HE. The gift proceeds came from the sale of client FM's condominium.

28. The Respondent deposited the gift proceeds into his personal bank account. The proceeds remained in the Respondent's personal bank account until December 21, 2011, when he deposited the funds into client FM's in-trust account at the Member. The Respondent was never comfortable receiving the gift of funds.

29. In January 2012, HE contacted the Respondent to request that he reverse the deposit because of adverse legal and tax implications for the in-trust account. The Respondent subsequently deposited the funds back into his personal bank account.

30. From 2009 to 2012, the Respondent did not disclose to his branch managers or anyone at the Member that he had received the monetary gift from client FM.

31. On July 13, 2012, following client FM's death, SM sent her letter of complaint to the Member alleging that the Respondent had received the monetary gift from her father in July 2009.

32. On January 25, 2013, the Respondent issued a \$309,475 bank draft payable to SM's legal counsel in trust, representing the return of the \$309,475 gift he had received from her father in July 2009.

33. At all material times the Member's policies and procedures manual outlined, "Examples of Conflict of Interest Situations" that could give rise to a conflict of interest. In particular, the manual stated:

- i. *Any conflict or potential conflict of interest that arises must be immediately disclosed in writing to the client prior to Investors Group proceeding with the proposed transaction giving rise to the conflict or potential conflict. Whenever you feel you may be facing a potential conflict of interest, it is important that the issue be discussed with your Branch Manager who may consult with Compliance to determine appropriate resolution.*

34. On February 4, 2013, the Member issued a second warning letter to the Respondent for failing to disclose to the Member that he had engaged in personal financial dealings with a client by accepting the monetary gift.

Misleading the Member

35. The Member distributed Annual Consultant Certifications (ACCs) to its salespersons each June which required them to respond to compliance related questions, concerning, among other things, whether they had been designated as beneficiary of a client's account or had received gifts from clients.

36. From 2009 to 2012, Question Q1 of the 2009 ACC stated, in part:

Q: "I have not received or provided any monetary or non-monetary gifts to or from clients, other than non-monetary gifts of a nominal value (gifts to family members are not subject to restriction)."

37. The Respondent answered, "True" to this question in the years 2009-2012, despite the fact that he was in receipt of the monetary gift from client FM for substantially all of this period.

38. In 2009 and 2010, the ACC did not include a question about being named beneficiary of client accounts. In 2011, the Member expanded the scope of the ACC to address that issue. Question Q2 of the 2011 and 2012 ACC's stated in part:

Q: "Except in the case of family as clients, I am not aware of being named beneficiary of a client's estate or any client account held with Investors Group."

39. The Respondent answered "True" to this question on the 2011 ACC. The respondent answered "False" to this same question in 2012, however, at the time he did so, he had already disclosed to the Member in writing on January 25, 2012, that he had been named as the beneficiary of the in-trust account following the death of client FM.

Additional Considerations

40. The Respondent has no prior disciplinary history with the MFDA, and was a dealing representative for more than 20 years. He cooperated fully with Staff's investigation and with the Member.

41. Client FM received independent legal advice in relation to each transaction at issue.

42. There was no borrowing, lending or outside business arrangement between the Respondent and client FM.

43. No client suffered any financial or other harm as a result of the Respondent's actions.

44. The monetary gift was made by client FM with the benefit of independent legal advice and without solicitation from the Respondent.

THE RESPONDENT'S POSITION

45. The Respondent did not seek to take advantage of client FM whose interests were at all times protected by client FM's independent legal advisor. The in-trust account was established, by way of written instructions from, and managed by client FM's lawyer.

46. The Respondent understood that client FM did not have the support and assistance of client FM's family in dealing with these matters and agreed to accept the power of attorney because of the Respondent's close friendship with client FM.

47. The Respondent reluctantly accepted the monetary gift at client FM's insistence, as thanks for helping client FM sell his condominium and assisting in his transition to a suitable retirement care facility. The Respondent counseled client FM to attempt to reconcile with his family and to leave his estate to his family.

48. The Respondent offered his support to client FM without any expectation of personal gain. Rather, the Respondent's support and assistance was provided out of empathy for a man who, in the Respondent's view, needed assistance and who was the Respondent's close friend.

ANALYSIS AND DECISION

49. 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.

50. We reviewed the penalties assessed in similar cases. The penalty in this instance is at the low end of the range. This is appropriate in the circumstances.

51. We are mindful of the seriousness of the Respondent's misconduct. In particular we point to the failure of the Respondent to advise the Member of the monetary gift and potential conflict of interest with client FM, even when specifically asked through the ACC, making it virtually

impossible for the Member to address the conflict of interest or potential conflict of interest and to ensure its business was compliant with industry rules.

52. Nevertheless we acknowledge the mitigating factors:

- d) client FM was represented by independent legal counsel;
- e) the Respondent was attempting to help client FM;
- f) there was no financial or other harm to client FM;
- g) d) the Respondent has worked in the securities industry for over 20 years and has never previously been the subject of an MFDA disciplinary proceeding; and,
- h) the Respondent has expressed remorse for his conduct, has cooperated with the investigation, has agreed to settle the matter, and has retired from the industry.

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

54. For these reasons we approve the Settlement Agreement.

DATED this 18th day of June, 2015.

“Bradley Doney”

Bradley Doney
Chair

“Darlene Barker”

Darlene Barker
Industry Representative

“David Webb”

David Webb
Industry Representative