



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: Tanzeela Kausar

Heard: October 10, 2019 in Toronto, Ontario
Decision: October 10, 2019
Reasons for Decision: January 24, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall QC
Timothy J. Pryor
Edward Jackson

Chair
Industry Representative
Industry Representative

Appearances:

David Barbaree)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Jonathan Wansbrough)	Counsel for the Respondent
)	
)	
Tanzeela Kausar)	Respondent, by teleconference
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I. INTRODUCTION

1. By Notice of Hearing dated October 15, 2018 (“Notice of Hearing”), the Mutual Fund Dealers Association of Canada (“MFDA”) commenced a disciplinary proceeding against Tanzeela Kausar (“Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. By news release dated May 14, 2019, the MFDA announced that the hearing of this matter on its merits was to be held on October 10, 2019. On October 2, 2019, Staff and the Respondent entered into a settlement agreement dated October 2, 2019 (“Settlement Agreement”) which was put before a Hearing Panel of the Central Regional Council (“Hearing Panel”) to determine whether the Settlement Agreement should be accepted by it.

3. The subject matter of the Settlement Agreement concerns matters for which the Respondent might be disciplined pursuant to ss. 20 and 24.1.1 of MFDA By-law No. 1. In particular, the Settlement Agreement concerns the allegation made in the Notice of Hearing that the Respondent:

Allegation #1: In July 2016, the Respondent failed to learn or record the essential Know-Your-Client Factors relative to a client, and recommended and accepted trades that were unsuitable having regard to the client’s essential Know-Your-Client Factors, contrary to MFDA Rules 2.2.1 and 2.1.1.

4. In Part V of the Settlement Agreement, at paragraph 26, the Respondent admits this allegation as follows:

26. The Respondent admits that in July 2016, she failed to learn or record the essential KYC factors relative to a client when she recorded client CC as having a 3-5 year investment time horizon, and recommended and accepted trades that were unsuitable having regard to the client CC’s essential KYC factors including his investment time horizon, contrary to MFDA Rules 2.2.1 and 2.1.1.

5. Further, as is set out in paragraph 27 of the Settlement Agreement, the Respondent agreed to the following terms of settlement:

27. a) a reprimand, pursuant to s. 24.1.1(a) of By-law No.1;

- b) The Respondent shall successfully complete an ethics or other industry course acceptable to the MFDA prior to re-registering as a dealing representative; and
- c) The Respondent will attend in person or by teleconference on the date set for the Settlement Hearing.

6. The Hearing Panel, upon the joint motion of Staff and the Respondent, granted an order 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”.

7. 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.”

8. 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*.

9. After considering the Settlement Agreement, together with the full submissions made by counsel for the MFDA and counsel for the Respondent, as well as having received satisfactory answers to the questions posed by the Hearing Panel members, the Hearing Panel unanimously accepted the Settlement Agreement. The Hearing Panel made an order to that effect and indicated that Reasons for Decision would follow in due course. These are those Reasons for Decision.

II. AGREED FACTS AND ADDITIONAL FACTORS

10. The additional portions of the Settlement Agreement which are relevant to these Reasons for Decision are contained in Part IV Agreed Facts and are reproduced here:

Registration History

6. From May 29, 2014 to March 4, 2019, the Respondent was registered in Ontario as a dealing representative with TD Investment Services Inc. (“TDIS”), a Member of the MFDA.

7. TDIS is affiliated with The Toronto-Dominion Bank (“TD Bank”) which provides, among other things, retail banking services.

8. At all material times, the Respondent conducted mutual fund business from a joint TDIS and TD Bank branch office in Mississauga, Ontario (the “Mississauga Branch”).

Client CC

9. On or about March 1, 2016, client CC entered into an agreement to purchase a new home in Milton, Ontario from a builder. The home was scheduled to be completed, and the sale of the home was scheduled to close, on March 22, 2017.

10. Shortly thereafter, TD Bank pre-approved client CC for a mortgage to purchase the new home. JR, an Approved Person at a joint TDIS and TD Bank branch in Milton, Ontario (the “Milton Branch”), assisted client CC to apply for the mortgage pre-approval at TD Bank.

11. On or about July 3, 2016, client CC completed the sale of his then-current home and deposited the sale proceeds of \$330,132.87 into an account at TD Bank at the Milton Branch (the “Bank Account”).

12. Client CC had previously been a TD Bank client serviced at the Mississauga Branch.

13. Client CC’s deposit into the Bank Account triggered a ‘large deposit’ notification to the Respondent’s Branch Manager at the Mississauga Branch. On July 4, 2016, the Branch Manager sent an email to the Respondent requesting that she contact client CC regarding his recent deposit in the Bank Account, as well as several other clients who had recently deposited large amounts into accounts at TD Bank, as it was a “[g]reat opportunity to have a conversation about investment or potentially they are purchasing a property (opportunity for [real estate lending])!”.

14. On July 19, 2016, the Respondent met with client CC at the Mississauga Branch. Client CC informed the Respondent that he had purchased a home and that the sale would be closing in March 2017.

15. Notwithstanding that the Respondent knew or ought to have known that client CC required the monies deposited in his TD Bank account to complete the purchase of a home within approximately nine months, the Respondent recommended, and client CC agreed, to:

- a) open a Tax Free Savings Account at TDIS and purchase \$44,000 of the TD Comfort Balanced Income Portfolio; and
- b) open a non-registered account at TDIS and purchase \$256,000 of the TD Comfort Balanced Income Portfolio.

16. The TD Comfort Balanced Income Portfolio was rated as a low to medium risk fund. The fund exposed client CC to risk of market loss. In the course of collecting client CC's Know-Your-Client ("KYC") information to open the accounts at TDIS and submit the trades for processing, the Respondent recorded client CC's investment time horizon as 3-5 years. The time horizon recorded by the Respondent was inconsistent with client CC's need for monies to complete the purchase of a home within approximately 9 months. The Respondent submitted the trades on July 19, 2016 and TDIS completed its processing of the trades on July 20, 2016.

17. On July 21, 2016, Approved Person JR became aware that \$300,000 had been transferred from the Bank Account and used to purchase mutual funds at TDIS. Approved Person JR was aware that client CC required the monies to purchase a home in March 2017 and immediately contacted client CC to inquire about the mutual fund purchases.

18. Approved Person JR advised client CC that the funds he intended to purchase his new home were now exposed to a risk of market loss. Client CC asked that the mutual fund trades be reversed.

19. On July 27, 2016, TDIS reversed the mutual funds trades submitted by the Respondent.

....

24. The Respondent is the sole caregiver to a family member who is a minor with a serious medical condition that requires constant care. The Respondent states that, as a result of her family member's illness, she is on a leave of absence from her employment and has no financial means to pay a fine or costs.

25. The Respondent acknowledges that absent the factors described above, it would be appropriate for her to be subject to a penalty that includes a fine, due to the seriousness of the misconduct that is the subject of the Settlement Agreement.¹

¹ This is a surprising and unfortunate paragraph. The acknowledgment is not helpful to the Hearing Panel's consideration of the matter and might fairly be viewed as overreaching. The Respondent agreed to the penalties as required by section 24.4.2, that is enough.

III. FURTHER FACTS

11. During the course of the hearing the Hearing Panel was given, following questions by it, some further information which bears in its disposition of this application for acceptance of the Settlement Agreement. It must be said that at the end of the proceeding, while we were given sufficient information to conclude that the Settlement Agreement fell within the required zone of reasonable appropriateness, we were nonetheless left with the feeling that we had a good deal less than all of the relevant facts.

12. However, that is the nature of the MFDA settlement process which requires a Hearing Panel to have confidence that it is being told those facts which are necessary to fulfil its task in a just and fair way. More specifically, basic information about who was interviewed would usually be helpful. In this case, a review of the KYC form in issue might also have been helpful as it is, in a real sense, an agreed fact.

13. We also learned that the Respondent's child is suffering from a serious medical condition that requires constant care and, as the sole parent, the Respondent has had to take a leave of absence from her employer, which remains the TD Bank. She apparently was not terminated by TD Bank but ceased to do any MFDA related work while in its active employ.

14. Lastly, the Hearing Panel learned during the Hearing that the KYC does not expressly deal with the subject of when the money would be needed by the client, other than to recite a time horizon which was inconsistent with the need for the money to finance a house purchase in the near term.

15. When pressed by the Hearing Panel on this subject, both counsel helpfully guided the Hearing Panel to the essence of the compromise that led to a settlement. The emphasis should be on the words, contained in paragraph 15 of the Settlement Agreement, *supra*, that the Respondent "...knew or ought to have known that the client CC required the monies...to complete the purchase of a home within approximately nine months...". That wording allowed the Respondent to agree that she should have done more to inquire about the timing of the client's need for the money in future. She accepted the compromise on the basis she agreed that she "ought to have known" with the meaning of paragraph 15.

IV. REASONS AND ANALYSIS

16. A settlement agreement within the meaning of section 24.4 of MFDA By-law No. 1 is the result of a negotiated settlement. The hearing panel in *Singer (Re)*, MFDA Rile No. 201636, March 7, 2017 Pacific Region offered the following guidance as to how a hearing panel should assess a settlement agreement:

The use of a Settlement Agreement to reflect a negotiated settlement should be encouraged provided the penalties set forth in the agreement “strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets, and prevention of a repetition of the offense”: *Re: Kelvin Donald Byce*, MFDA File No. 201311, September 4, 2013, Central Regional Council, para. 5. (emphasis added)

17. It is recognized that the choice the hearing panel has is binary: accept or reject the settlement agreement in its entirety. Settlements are, by their essential nature, compromises where each party has given up something to get the other party’s agreement to the terms of the resolution of the matter.

18. Compromises usually do not result in a resolution the terms of which are regarded as optimal by both sides. The end result of the negotiating process may also not be ideal viewed from the perspective of a hearing panel trying to decide whether it is acceptable.

19. For that reason, the test to be applied by a hearing panel in deciding whether to accept a settlement agreement (as opposed to approving it) is to determine if the penalty is one which it regards as “...clearly falling outside a reasonable range of appropriateness.”

Sterling Mutuals Inc. (Re), MFDA File No. 200820, September 3, 2008, para 37, Central Region.

Milewski (Re), [1999] IDACD No. 17 at p. 10 and 12, July 28, 1999.

20. The Hearing Panel was concerned that, in the particular circumstances of the case, the Respondent was placed under unfair pressure to accept the terms of the Settlement Agreement. We therefore closely questioned Staff and counsel for the Respondent on this subject. What we had in mind was to ensure that, all things considered, the process and result were both “fair” to the

Respondent. We had in mind the criteria for an acceptable settlement as it was described in *British Columbia Securities Commission v Seifert*, 2007 BCCA 484 at para 31:

Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego their time and expense of a hearing. (emphasis added)

21. As a relevant aside, the *Seifert* case fails to take into account the fact that the option of refusing to settle, especially in the circumstances of many MFDA cases, is often illusory. This is the case for several reasons. First, the cost of mounting a defence is prohibitive for most individuals who have lost their jobs as a result of the case. Second, an unsuccessful defence just exacerbates the damage to professional reputation caused by the charge while the terms of a balanced Settlement Agreement may serve to ameliorate it. Such is the nature of the Settlement Agreement before us in this case.

22. It is often the case that legal representation is out of reach for a Respondent in a case such as the present one. Ms. Kausar was most fortunate to have been represented by able counsel who clearly provided needed counsel and advice. This was particularly evident towards the end of the hearing, after we had expressed our concerns to counsel about both the merits and the suitability of the penalties. We asked Mr. Wansbrough, the Respondent's counsel, to speak to his client, who was present by telephone, to ensure she understood the implications of the discussions between counsel and the Hearing Panel and to determine if she still wished to proceed with the settlement. We adjourned so he could confer with her.

23. After an approximately half an hour adjournment, counsel and the Respondent on the telephone returned. Mr. Wansbrough reported as follows:

Mr. Wansbrough: -- first? Okay. I thank the Panel very much for its comments. I did have the opportunity of the Panel's suggestion to speak with Ms. Kausar who is on the line. We had a good discussion. But Ms. Kausar would like to proceed today with the settlement agreement as agreed on the facts set out in the settlement agreement. She is keen to put this matter behind her. So that's where we are. If you have any questions, of course, happy to answer.

24. The Hearing Panel was then satisfied that it would be appropriate to accept the Settlement Agreement and indicated it would do so.

25. The practice in most cases is for the Hearing Panel to be guided, to a lesser or greater extent, by the penalty dispositions made in similar cases. Staff provided us with a descriptive matrix of three cases which dealt with Know Your Client information. However, the present case is so factually dissimilar to them that they provided little or no guidance. However, for the sake of completeness, Staff's matrix is reproduced below:

Case	Facts	Outcome
<i>Avhad (Re)</i> , MFDA File No. 201832, Prairie Region, July 13, 2018	The Respondent opened two accounts for a client, recorded the client's Know-Your-Client information, and processed two transactions in the client's accounts without having met or communicated with the client, thereby failing to use due diligence to learn the essential facts relative to a client and to each order or account accepted, contrary to MFDA Rules 2.2.1 and 2.1.1.	<i>Settlement</i> <ul style="list-style-type: none"> • 4 month suspension • Costs of \$2,500 (payable in instalments)
<i>Wray (Re)</i> , 2017 LNCMFDA 130	Between June 2002 and March 2014, the Respondent opened a client account, updated the client's Know-Your-Client information on three occasions and processed trades in the client's account without having communicated directly with the client, thereby failing to use due diligence to learn the essential facts relative to the client and to each order or account accepted, contrary to MFDA Rules 2.2.1 and 2.1.1.	<i>Settlement</i> <ul style="list-style-type: none"> • \$15,000 fine • Costs of \$2,500
<i>Singer (Re)</i> , [2017] MFDA File No. 201636, Pacific Region, March 7, 2017	Between June 2011 and March 17, 2014, the Respondent failed to use due diligence to learn the essential facts relative to client AO and accurately record the essential facts on the client's New Account Application Forms, contrary to MFDA Rules 2.2.1(a) and 2.1.1. Between June 2011 and March 17, 2014, the Respondent failed to ensure that an investment recommendation he made to client AO was suitable having regard to the	<i>Settlement</i> <ul style="list-style-type: none"> • \$63,500 fine • Costs of \$10,000

Case	Facts	Outcome
	<p>client's Know-Your-Client ("KYC") factors including her investment objectives, investment knowledge, risk tolerance, time horizon, and failed to ensure appropriate diversification of her investment portfolio contrary to MFDA Rules 2.2.1 and 2.1.1.</p> <p>Between June 2011 and March 17, 2014, the Respondent failed to adequately explain the risks, benefits, material assumptions and features of exempt securities he recommended to client AO, thereby failing to present the investment to the client in a fair and balanced manner, contrary to MFDA Rules 2.2.1 and 2.1.1.</p> <p>Between November 17, 2011 and March 17, 2014, the Respondent failed to review or reconsider his recommendation to client AO in light of criteria for assessing the suitability of the ROI Funds provided by the Member FundEX in December 2011, contrary to MFDA Rules 2.2.1 and 2.1.1.</p>	

V. CONCLUSION

26. It was for the foregoing reasons that the Hearing Panel determined that the terms of the Settlement Agreement fell within a reasonable zone of appropriateness and accepted it on October 10, 2019.

DATED this 24th day of January, 2020.

“John Lorn McDougall”

John Lorn McDougall, QC
Chair

“Timothy J. Pryor”

Timothy J. Pryor
Industry Representative

“Edward Jackson”

Edward Jackson
Industry Representative

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