



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: Robert John Kent

Heard: March 4, 2016, in St. John's, Newfoundland
Reasons for Decision: April 4, 2016

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

R. Scott Peacock	Chair
Ann C. Etter	Industry Representative
Darrell Bing	Industry Representative

Appearances:

Paul Blasiak)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Robert John Kent)	In Person
)	
)	

INTRODUCTION:

1. A Notice of Settlement Hearing was issued on November 13, 2015, providing notice that a hearing would be held before a Hearing Panel of the Atlantic Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was scheduled for March 4, 2016 in St. John’s, Newfoundland. The hearing was to determine whether a settlement agreement entered into by Staff of the MFDA (“Staff”) and Robert John Kent (the “Respondent”) should be accepted pursuant to section 24.4.3 of MFDA By-law No. 1.

2. MFDA Staff and the Respondent had entered into a settlement agreement dated November 12, 2015 (the “Settlement Agreement”) in which the Respondent admitted that between April 2013 and July 2014, he obtained and used to process trades, 11 pre-signed Order Instructions forms in respect of 8 clients, contrary to MFDA Rule 2.1.1. The investigation did not disclose any client complaints, there was no evidence of adverse economic consequences for the clients and the Respondent did not gain financially from the misconduct.

3. Reasons were delivered orally at the conclusion of the Hearing on March 4, 2016 accepting the Settlement Agreement as being in the public interest imposing a fine in the amount of \$ 6,000.00 and costs in the amount of \$ 2,500.00.

REASONS:

4. The matter for consideration by the Hearing Panel was set forth in paragraph 3 of the Settlement Agreement which stated:

“3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.”

5. The Hearing Panel considered the oral and written submissions of Staff and the Respondent made in support of the acceptance of the Settlement Agreement.

6. Staff made submissions and submitted authorities¹ in support of the proposition that a Hearing Panel should not reject a proffered settlement agreement unless the disposition, in the considered opinion of the Hearing Panel, is unreasonable in contemplation of all of the surrounding circumstances, facts and provisions of the By-laws.

7. The provisions of section 24.2 of By-law No. 1 afford a Hearing Panel the discretion to require a Member or Approved Person to pay the costs of the proceeding before the Hearing Panel and the investigation related to the hearing in whole or in part. A factor for the Hearing Panel to consider in evaluating the appropriateness of a Settlement Agreement is whether or not the proposed contribution to costs is also reasonable.

8. In *Sterling Mutuals Inc. (Re)*² the Hearing Panel set forth factors to be considered in the acceptance of Settlement Agreements at paragraph 36. Amongst these factors was “2. That the agreement is reasonable and proportionate, having regard to the conduct of the Respondents.” and further “7. That the agreement will foster confidence in the regulatory process itself.”

9. If the Settlement Agreement is to realize these objectives consideration should be given to whether or not the penalty and the costs awarded are appropriate and proportionate in all of the circumstances. The costs of the regulatory investigation and subsequent hearing process have a direct effect on the industry and indirectly upon investors generally. These are also factors that figure in the determination whether or not the Settlement Agreement is in the public interest and reasonable and proportionate.

10. Although the By-law does not require a full indemnification for the costs of an investigation and hearing; the cost component in fairness and reasonableness, should be proportionate to actual costs. No evidence of actual costs was provided in this matter. Therefore

¹ *Sterling Mutual Funds Inc. (Re)* 2008 LNCMFDA 16; and *Milewski (Re)* [1999] 1 IDACD No. 17

² 1. *Supra*

having considered the facts and submissions of Staff and the Respondent the Hearing Panel is of the opinion that the Settlement Agreement is not unreasonable and therefore approved.

DATED this 4th day of April, 2016.

“R. Scott Peacock”

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Chair

“Ann C. Etter”

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Industry Representative

“Darrell Bing”

Darrell Bing
Industry Representative

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