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: Tuomo Tapio Kostamo

Heard: July 16, 2021 by electronic hearing in Vancouver, British Columbia
Decision: July 16, 2021
Reasons for Decision: August 9, 2021

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Michael Carroll, Q.C.	Chair
Darlene Barker	Industry Representative
Holly Martell	Industry Representative

Appearances:

Justin Dunphy	)	Senior Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Audrey Smith	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Hunter Parsons	)	Counsel for the Respondent
Tuomo Tapio Kostamo	)	Respondent

I. INTRODUCTION

1. On December 15, 2020 the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to section 24.4 of MFDA By-Law No.1 in respect of Tuomo Tapio Kostamo (the "Respondent").

2. On July 7, 2021 the Respondent entered into a Settlement Agreement with Staff of the MFDA (the "Settlement Agreement"), whereby the Respondent agreed to a proposed settlement of matters for which he would be disciplined pursuant to sections 20 and 24.1 of MFDA By-Law No. 1.

3. On July 16, 2021, the parties appeared before the Panel for a hearing to consider whether the Settlement Agreement should be approved.

II. FACTS

4. The relevant facts are set out in Section IV of the Settlement Agreement.

III. CONTRAVENTIONS

5. The Respondent admits that:

a) Commencing in 2016 he recommended that approximately 25 clients concentrate all, or a substantial portion, of their account holdings in precious metals sector mutual funds at a level of concentration that exceeded concentration limits permitted by the Member, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.2.1, 2.5.1, and 1.1.2;

b) Commencing in 2016 he inaccurately recorded purchases by clients of precious metals sector mutual funds as unsolicited when the Respondent recommended the purchases to the clients, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.2.1, 2.5.1, and 1.1.2; and

c) Between August 2016 and November 2018, he recommended that client JG invest a substantial portion of client JG's investable assets in precious metals sector mutual funds without using due diligence to ensure that:

i. investment recommendations that he made to client JG were suitable having regard to the client's essential Know Your Client information, and

ii. he adequately informed client JG about the risks of holding investments concentrated in precious metals sector mutual funds, contrary to the policies

and procedures of the Member and MFDA Rules 2.2.1, 2.1.1, 2.5.1, and 1.1.2.

IV. TERMS OF SETTLEMENT

6. The Respondent has agreed to the following terms of settlement:

a) A prohibition from conducting securities related business in any capacity while in the employ of, or associated with an MFDA Member for a period of 5 years pursuant to section 24.1(e) of MFDA By-law No. 1;

b) Payment of a fine in the amount of $15,000 in certified funds upon acceptance of the Settlement Agreement pursuant to section 24.1.1(b) of MFDA By-law No. 1;

c) Payment of costs in the amount of $5,000 in certified funds upon acceptance of the Settlement Agreement pursuant to section 24.2 of MFDA By-law No. 1; and

d) Compliance in the future with MFDA Rules 1.1.2, 2.1.1, 2.2.1, and 2.5.1.

V. FACTORS CONCERNING ACCEPTANCE OF A SETTLEMENT AGREEMENT

7. Pursuant to section 24.4.3 of MFDA By-law No.1 a Hearing Panel must either accept a settlement agreement or reject it.

8. In past cases Hearing Panels have taken into account a number of factors in determining whether a settlement agreement should be accepted, including;

a) Whether acceptance would be in the public interest and whether the penalty imposed will protect investors;

b) Whether it is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;

c) Whether it will prevent the type of conduct from occurring again;

d) Whether it will foster confidence in the integrity of the MFDA and in the regulatory process itself.

Sterling Mutuals Inc. (Re) MFDA File No.200820 Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at p. 9.

VI. APPROPRIATENESS OF THE PROPOSED PENALTY

9. Investor protection is the primary goal of securities regulation whether in the context of a settlement or contested hearing.

Pezim v. British Columbia (Superintendent of Brokers) [1994] 2 SCR 557 paras. 59 and 68.

Breckenridge (Re) MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 74.

10. Some of the factors to be considered in determining whether the penalty is appropriate are:

a) The seriousness of the allegations proved against the Respondent;
b) The Respondent's past conduct, including prior sanctions;
c) The Respondent's experience and level of activity in the capital markets;
d) The harm suffered by investors as a result of the Respondent's activities;
e) The benefits received by the Respondent as a result of the misconduct;
f) The need to deter the Respondent and any others who participate in the capital markets from engaging in similar improper activity;
g) Previous decisions made in similar circumstances.

Breckenridge (Re) Supra. at para. 77 and decisions cited therein.

11. Counsel for the MFDA has referred us to the Sanction Guidelines of the MFDA which are not mandatory but intended to provide guidance to a Hearing Panel and has pointed to the following factors set out in the Sanction Guidelines as being relevant to the present case:

a) General and specific deterrence;
b) Public confidence;
c) Seriousness of the allegations proved;
d) The Respondent's recognition of the seriousness of the misconduct;
e) Harm suffered by the investors; and
f) Previous decisions made in similar circumstances.

VII. APPLICATION IN THE PRESENT CASE

Seriousness of the Misconduct

12. The "Know Your Client" Rule was referred to as the "Cardinal Rule" by the Hearing Panel in *Lamoureux (Re)* and is the cornerstone obligation of an Approved Person's dealings with clients.

Lamoureux (Re) [200] ASCD No. 613 at pp. 11-12.

13. In the present matter the Respondent failed to use adequate due diligence to ensure that investment recommendations given to client JG were suitable. He also failed to ensure the

suitability of investment recommendations to 24 additional clients by exceeding the concentration limits set out by the Member with respect to those clients.

14. The Respondent also relied on a Speculative Investment Acknowledgement Form to inaccurately represent to the Member that the clients purchases were unsolicited and had been told that their account holdings were unsuitable, when in fact he had recommended that the clients invest more than 25% of the value of their accounts in precious metals sector funds. Holding a high concentration of investments in one sector has been found to increase client risk.

> *Biduk (Re),*2013 IIROC19, at paras. 86 and 87.

15. Hearing Panels have also confirmed that when Approved Persons fail to comply with the Know Your Client obligations, such conduct is also a violation of the standard of conduct under MFDA Rule 2.1.1.

> *Lemay (Re)* MFDA File No. 201634, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated February 28, 2017, at paras. 26-29.

Failure to Comply with MFDA Policies and Procedures

16. In the present case the Respondent failed to comply with MFDA Rules 2.1.1, 2.2.1, 2.5.1, and 1.1.2 as well the Member's policies and procedures in recommending that clients invest more than 25% in precious metals sector mutual funds held at the dealer. When Approved Persons disregard policies and procedures of a Member the ability of the Member to supervise their conduct and protect the interests of clients is undermined.

> *Franco (Re),* MFDA File No. 201016, Hearing Panel of the Prairies Regional Council, Decision and Reasons dated May 6, 2011, at para. 38.

The Respondent's Past Conduct and Experience in the Capital Markets and Recognition of the Seriousness of his Misconduct in the Present Case

17. The Respondent has been registered as a dealing representative with the Member since October 1995 and was designated a branch manager between January 1997 and April 2020. He was experienced in the industry. He has not previously been subject to any discipline by the MFDA.

18. By entering into the Settlement Agreement he has accepted responsibility for his misconduct and avoided the necessity incurring the additional time and expense of a contested hearing.

Harm Suffered by Investors and Benefits Received by the Respondent

19. While the conduct engaged in by the Respondent exposed clients with portfolios that were overly concentrated in precious metals sector funds to unsuitable market risks for such client the only proof of actual loss we have been shown is with respect to client JG in the amount of $18,806, for which she was compensated by the Member.

Settlement Agreement paragraphs 37-39

20. In April 2018, the Member required the Respondent and his daughter, who was also an Approved Person, to contact the remaining 24 clients to update the clients Know Your Client information and complete an updated speculative account review worksheet and rebalance the account holdings as necessary to ensure their suitability. Subsequently in March 2019 the Member conducted a follow up review of those clients whose investment holdings in precious metals sector funds still exceeded the Member's concentration limits. The Member then sent letters in May and October 2019 to those clients in order to discuss options to rebalance their accounts. It received no responses to either of these letters.

21. Of the 24 clients who were contacted by the Respondent and his daughter;

a) 15 elected to maintain their investments without any rebalancing;
b) 2 rebalanced their portfolios;
c) 2 transferred their investment accounts out of the Member;
d) 1 redeemed their investment account; and
e) 4 either declined to respond to the Respondent, his daughter, or the Member.

Settlement Agreement paragraph 42

22. There is no evidence that any clients other than JG have submitted complaints to the Member or the MFDA concerning the conduct described in the Settlement Agreement.

Deterrence

23. MFDA Staff considers and the Panel agrees that a 5-year prohibition, a fine of $15,000, and costs of $5,000 is a substantial penalty and will be sufficient to achieve the goals of specific and general deterrence. It considers that the proposed penalties are necessary in order to communicate to other Approved Persons that the misconduct engaged in by the Respondent has

no place in the mutual fund industry and are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian Mutual Fund industry.

Previous Decisions Made in Similar Circumstances

24. Counsel for the MFDA has referred us to the following decisions where Approved Persons have been disciplined for failing to conform to Know Your Client requirements and by failing to ensure that client investments were suitable having regard to the concentration of precious metal sector funds in their account.

> *Fike (Re)* MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017.
>
> *Dion (Re)* 2017 IIROC 20.
>
> *Lemay (Re) Supra.*
>
> *Will (Re)* MFDA File No. 201763, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated February 1, 2018.
>
> *Gordon (Re) MFDA File No.201849,* Hearing Panel of the Pacific Regional Council, Decision and Reasons dated December 5, 2019.

25. The decisions noted above approved penalties ranging from no prohibitions to permanent prohibitions, fines between $5,000 and $25,000 plus disgorgement of commissions, and costs ranging from $2,500 to $5,000.

26. The Panel has concluded that the terms of the Settlement Agreement outlined above in paragraph 6 are appropriate for the circumstances of this case and within the parameters set out in the previous decisions referenced above. The Settlement Agreement is therefore approved.

DATED this 9th day of August, 2021.

"Michael Carroll"
Michael Carroll, Q.C.
Chair

"Darlene Barker"
Darlene Barker
Industry Representative

"Holly Martell"
Holly Martell
Industry Representative

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