



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: Alan Roy Kruss

Heard: March 24, 2010 in Toronto, Ontario
Reasons for Decision: April 5, 2010

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Edward Saunders, Q.C.
Guenther Kleberg
Richard Williams

Chair
Industry Representative
Industry Representative

Appearances:

Lyla Simon)	For the Mutual Fund Dealers Association of
)	Canada
Bruce O'Toole)	For the Respondent (who also attended in
)	person)

1. Following a notice of hearing the MFDA and the Respondent entered into a settlement agreement dated December 15, 2009, with respect to the allegation in the notice of hearing.
2. In the settlement agreement the Respondent admitted that between 2004 and 2006 while an Approved person at two consecutive Members, he engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring, or facilitating the sale of \$50,000 of an investment product to client KS on two separate occasions, when that investment product had not been approved for sale by the Member, contrary to MFDA Rule 1.1.1.
3. The purpose of this hearing is to accept or reject the settlement agreement pursuant to Section 24.4.3 of By-law No. 1 of the MFDA. In performing this task we must be mindful of the public interest. On the other hand it is clearly established that we should accept a settlement recommended by staff of the MFDA unless it falls outside the reasonable range of what is appropriate in the circumstances.
4. The background facts are detailed in the settlement agreement and need not be repeated. On consent of the parties, we obtained further information which was of assistance in making our decision. We are assured by both counsel that the Respondent had not been subject to any previous MFDA disciplinary proceedings. We were told that the MFDA staff was satisfied that the transactions which the Respondent admitted to were isolated and not part of a wider activity.
5. In paragraph 13 of the staff submissions we were referred to factors in the Penalty Guidelines of the MFDA which should be considered. Among these was "Suitability of outside business activity". There was no evidence before us as to the wealth and sophistication of the client in the transactions nor to the suitability of the investment. We wish to make clear that we make no findings on the factor of suitability of the investment sold to the client.

6. We have reviewed the facts and the penalty agreed to. We have been told that the amount of money of the fine and costs are held by the MFDA in escrow. We consider the settlement to fall within the range of what is reasonable and appropriate. Accordingly the settlement is accepted.

DATED this 5th day of April, 2010.

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

“Guenther Kleberg”
Guenther Kleberg
Industry Representative

“Richard Williams”
Richard Williams
Industry Representative

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