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: Jon Robert Snelson

Heard: October 18, 2018 in Toronto, Ontario
Decision: October 18, 2018
Reasons for Decision: December 19, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart	Chair
Kenneth P. Mann	Industry Representative
Edward V. Jackson	Industry Representative

Appearances:

Michelle Pong	)	Counsel for the Mutual Fund Dealers Association of Canada
A. Benson Forrest	)	Counsel for the Respondent
Jon Robert Snelson	)	Respondent, in person

I. BACKGROUND

1. Proceedings were commenced by the Mutual Fund Dealers Association of Canada ("MFDA") against Jon Robert Snelson (the "Respondent") by Notice of Hearing, dated November 22, 2017. At the first appearance on February 15, 2018, the hearing was scheduled to be held October 15-19, 2018. The MFDA issued a news release on October 12, 2018 announcing that, as a result of a Settlement Agreement entered into between MFDA Staff ("Staff") and the Respondent, a settlement hearing would take place on October 18, 2018.

2. At the conclusion of the settlement hearing on October 18, 2018, the Hearing Panel decided to accept the Settlement Agreement. These are our reasons for that decision.

II. AGREED FACTS

3. Staff and the Respondent agreed to the facts set out below that are relevant to our decision.

Registration History

4. Between April 16, 2007 and January 29, 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with IPC Investment Corporation ("IPC"), a Member of the MFDA.

5. The Respondent resigned from IPC on January 19, 2016 and is not currently registered in the securities industry in any capacity. At the hearing the Respondent indicated he does not intend to re-enter the mutual fund sales industry.

The Respondent was Appointed as a Director of Threegold

6. At all material times, IPC's policies and procedures required its Approved Persons to disclose, and obtain approval, in order to engage in any outside business activities.

7. In 2010, the Respondent became a shareholder of a junior mining company, Threegold Resources Inc. ("Threegold").

8. Between May and September 2014, Threegold was cease traded in Ontario, British Columbia, Manitoba, Québec, and Alberta for failing to file audited annual financial statements

for the year ended December 31, 2013, management's discussion and analysis relating to the audited annual financial statements, and certification of the filings as required by National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings.

9. On October 9, 2014, the Respondent was appointed to Threegold's Board of Directors. The Respondent did not disclose this appointment to IPC at this time.

10. Threegold's financial statements state that from 2014 to March 2015, the Respondent earned $60,000 from his involvement with Threegold. The Respondent states that he was owed these monies but did not actually receive any remuneration from his involvement with Threegold.

11. On March 9, 2015, the Respondent completed IPC's OBA/Community Service Questionnaire ("OBA Questionnaire") and disclosed for the first time that he had been appointed to Threegold's Board of Directors. In the OBA Questionnaire and in response to further inquiries from IPC's compliance staff, the Respondent provided, among other things, the following information:

- In response to the question in the OBA Questionnaire, "Do you invest money or make investment decisions for this activity?", the Respondent stated, "No";
- In response to the question in the OBA Questionnaire, "Are any IPC clients involved with this activity?", the Respondent stated, "No";
- In response to the question in the OBA Questionnaire, "Do you receive any remuneration for this activity?", the Respondent stated, "No".

12. On March 12, 2015, IPC approved the Respondent acting as a Director of Threegold as an outside business activity based on the information provided by the Respondent.

13. At that time, IPC advised the Respondent, in writing, that "[i]f there are any material changes with your OBA or you are no longer involved with an outside business activity, please email…with the details of the change."

The Respondent Sold Threegold Debentures to Investors

14. At all material times, IPC's policies and procedures required that its Approved Persons only offer products it had approved for sale, and that all products be sold through IPC.

15. Between August 19, 2015 and November 13, 2015, the Respondent recommended, sold and/or facilitated the sale of investments to at least 15 IPC clients and 4 individuals totaling approximately $310,000 in debentures offered by Threegold. The Respondent did not disclose those transactions to IPC at that time.

16. All of the investors in the debentures signed a "Loan Agreement" with Threegold, which stated the "[b]orrower hereby warrants that the loan may be converted into shares" subject to certain conditions which Threegold "expected" would be met.

17. The debentures included the following terms with respect to the use of the proceeds raised from the investors:

a) Threegold will use the first $30,000 to "bring the company to good standing with Computershare, the lawyers, and the TSX";
b) Threegold will use $50,000 to $60,000 to complete an initial report validating the historical data on a property known as "Lotus";
c) Threegold will use $15,000 to make an option payment on the Lotus property;
d) Threegold will hold all funds raised over and above $100,000 in trust, until the work in points (a) and (b) are complete;
e) upon the positive validation of the historical data from the Lotus property, the debenture will be converted into flow-through shares in Threegold as per the terms and conditions of the debenture offering; and
f) should the validation process of the Lotus property prove negative, the funds will be returned to investors plus 5% interest for the use of the funds.

18. To the Respondent's knowledge, the proceeds raised from investors were used in an effort to get Threegold relisted on the TSX (which turned out to be well in excess of the original estimate of $30,000.00) and in pursuit of legitimate business objectives.

19. The Respondent signed all of the Loan Agreements as the "Authorized Signatory" for Threegold.

20. The Threegold debentures were not approved for sale by Approved Persons of IPC.

21. None of the transactions involving the Threegold debentures were conducted for the account of IPC or through its facilities.

22. The Respondent's conduct relating to the Threegold debentures exceeded the scope of what IPC had approved the Respondent to do as a Director of Threegold.

23. The Respondent failed to abide by the condition imposed by IPC at the time it approved him to act as a Director of Threegold, which required him to notify IPC "[i]f there are any material changes with your OBA". The Respondent knew or ought to have known that his involvement with the Threegold debentures was a material change because IPC had specifically asked him in the OBA Questionnaire whether "any IPC clients [were] involved with this activity?" and he had stated "No".

24. In addition, on November 24, 2015, the Respondent failed to disclose his involvement with the Threegold debentures when he completed IPC's annual compliance questionnaire (the "Compliance Questionnaire"). In response to the question, "Have you sold or do you promote any investments other than mutual funds (offered by simplified prospectus), GICs and if you are life licensed, segregated funds and other insurance products?", the Respondent inaccurately stated, "No." The Respondent's response was inaccurate as he had by then sold the Threegold debentures.

25. The Respondent's conduct gave rise to at least a potential conflict of interest between his interests as a Director and shareholder of Threegold and his clients' interests. The Respondent stated that he verbally disclosed to the investors that he owned shares and was a director of Threegold and that the investments were not being arranged in his capacity as an IPC mutual fund salesperson.

Additional

26. On December 3, 2015, the Respondent was appointed Chief Financial Officer ("CFO") of Threegold. On December 15, 2015, the Respondent advised IPC that he had become the CFO of Threegold, with an annual salary of $60,000. On December 21, 2015, in response to IPC's questions, "Are any clients involved in this activity? Do you solicit clients for this activity?, the Respondent stated, "I am not sure what you mean, are any clients involved in this activity. Some of my clients have advanced funds to Threegold in the form of debentures." On December 28, 2015, in response to IPC's request, the Respondent provided IPC with the names of the clients who invested in Threegold and a copy of the Loan Agreement.

27. On January 12, 2016, IPC informed the Respondent that it would not approve his outside business activity relating to Threegold.

28. On January 19, 2016, the Respondent resigned from IPC.

29. There was no evidence of any client complaints relating to the investments in Threegold.

III. CONTRAVENTIONS

30. The Respondent admitted that between October 9, 2014 and March 8, 2015, he failed to disclose to the Member that he had been appointed to the Board of Directors of a junior mining company, thereby engaging in an undisclosed and unapproved outside business activity, contrary to the Member's policies and procedures, and MFDA Rules 1.2.1(c) (now MFDA Rule 1.3), 1.1.2, 2.5.1, and 2.1.1.

31. The Respondent admitted that between August 19, 2015 and November 13, 2015, he recommended, sold and/or facilitated the sale of investments to at least 15 clients and 4 individuals totaling approximately $310,000 in debentures offered by a junior mining company, thereby engaging in securities related business which was not carried on for the account of the Member or conducted through its facilities, contrary to MFDA Rules 1.1.1, 2.1.4, and 2.1.1.

32. The Respondent admitted that between August 19, 2015 and November 24, 2015, he failed to provide fulsome and accurate information to the Member with respect to his involvement with a junior mining company, contrary to MFDA Rule 2.1.1.

IV. TERMS OF SETTLEMENT

33. The Respondent agreed to the following terms of settlement:

a) The Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member shall be prohibited for a period of four years commencing on the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

b) The Respondent shall pay a fine in the amount of $20,000, payable in four monthly instalments of $5,000 each, commencing two months from the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(b) of MFDA By-law No. 1

c) The Respondent shall pay costs in the amount of $5,000, pursuant to section 24.2 of MFDA By-law No. 1, payable as follows:

(i) $2,500 payable on or before the date of the settlement hearing;

(ii) $2,500 payable one month from the date the Settlement Agreement is accepted by the Hearing Panel; and

d) The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulation made thereunder, including MFDA Rules 1.1.1, 1.1.2, 1.3, 2.1.1, 2.1.4, and 2.5.1.

V. CONSIDERATIONS

34. Prior cases have established that a Hearing Panel should not reject a settlement unless it clearly falls outside a reasonable range of appropriateness.

35. In determining whether to accept the Settlement Agreement, the Hearing Panel considered whether it fell within a reasonable range of appropriateness, having regard to the Respondent's conduct, MFDA guidance and similar cases; whether it would serve as a general and specific deterrent; and whether it would be in the public interest to accept it.

36. The Hearing Panel is of the view that the contraventions by the Respondent are serious, namely engaging in an undisclosed and unapproved outside business activity contrary to IPC's policies and procedures and MFDA Rules 1.2.1(c) (now 1.3), 1.1.2, and 2.1.1; engaging in securities-related business that was not carried out for the account of IPC or through its facilities, contrary to MFDA Rules 1.1.1, 2.1.4 and 2.1.1; and failing to provide fulsome and accurate information to IPC with respect to his involvement with Threegold, contrary to MFDA Rule 2.1.1. Those contraventions resulted in IPC not being able to appropriately supervise the Respondent in relation to the subject activities. In particular, recommending, selling and/for facilitating the sale of the debentures outside of IPC exposed the clients to potential risk, given that the investments were not approved by IPC or subject to IPC's supervision over suitability of the investments.

37. In deciding to accept the Settlement Agreement, the Hearing Panel considered several facts as mitigating factors, including that the Respondent had accepted responsibility for his conduct in settling the matter; the Respondent had not previously been the subject of a MFDA disciplinary proceeding; the Respondent does not appear to have financially benefitted from the improper conduct; and there was no evidence of any client complaints relating to the investments in Threegold. However, with respect to the latter, it is not yet known what will be the ultimate result of those investments for the clients. We also noted that, prior to the hearing, the Respondent made the payment as to costs as required and provided post-dated cheques for the remainder of the payments.

38. Staff referred us to four previous decisions made in somewhat similar circumstances, namely: *In the Matter of David William Irwin*, [2010] MFDA Hearing Panel of the Central Regional Council, MFDA File No. 200915, Reasons for Decision dated April 28, 2010; *In the Matter of Michael Brandon Johns,* [2010] MFDA Hearing Panel of the Central Regional Council, MFDA File No. 200905, Reasons for Decision dated June 11, 2010; *In the Matter of Brian Edward Mark Nerdahl,* [2010] MFDA Hearing Panel of the Central Regional Council, MFDA File No.

200806, Reasons for Decision dated July 15, 2010; and *In the Matter of Ronald Lindsay Brown,* [2010] MFDA Hearing Panel of the Central Regional Council, MFDA File No. 200808, Reasons for Decision dated December 8, 2010. In each of those cases the penalty imposed on the Respondent was greater than that proposed in this case. However, each case must be considered on its own facts and we note that in those cases there were various aggravating factors present that were not involved in the case at hand. For example, in some of those cases greater amounts were raised from investors, in some of the cases the misconduct occurred over a longer period of time, in some of the cases the Respondent had received compensation in relation to the improper activity, in one case the investors were known to have suffered losses and one case did not involve a settlement. Accordingly, we were satisfied that a lesser penalty could be justified.

39. We also considered the MFDA Penalty Guidelines and found that the proposed penalty was reasonable in light of the Guidelines.

VI. CONCLUSION

40. The Hearing Panel concluded that the agreed penalty fell within a reasonable range of appropriateness having regard to the Respondent's conduct, MFDA guidance and other cases, would serve as a specific and general deterrent, and that acceptance of the Settlement Agreement would be in the public interest. Accordingly, the Hearing Panel accepted the Settlement Agreement.

DATED this 19th day of December, 2018.

"Joan Smart"
Joan Smart
Chair

"Kenneth P. Mann"
Kenneth P. Mann
Industry Representative

"Edward V. Jackson"
Edward V. Jackson
Industry Representative

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