



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: George Lincoln Piper

Heard: February 21, 2018 in Toronto, Ontario

Decision: February 21, 2018

Reasons for Decision: March 19, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC

Chair

Colleen Waring

Industry Representative

Joe Yassi

Industry Representative

Appearances:

Paul Blasiak

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Counsel for the Mutual Fund Dealers
Association of Canada

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Clarke Tedesco

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Counsel for the Respondent

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George Lincoln Piper

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Respondent, in person

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Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on February 21, 2018. The full Settlement Agreement, dated December 1, 2017, entered into between Staff of the MFDA and George Lincoln Piper (“Mr. Piper” or the “Respondent”) is available on the MFDA website. Mr. Piper was represented by counsel and appeared in person.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the February 21, 2018 hearing, with reasons to follow. These are our reasons for the decision.

3. The Respondent has been registered in the securities industry commencing in 1997. From July 2000 to May 2016, the Respondent was registered in Ontario and Québec as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA.

4. On May 20, 2016, the Respondent resigned from Quadrus and since June 2017 he has been registered in Ontario and Québec as a dealing representative with Excel Private Wealth Inc., a Member of the MFDA. At all material times, the Respondent conducted business in the Ottawa area.

5. This proceeding concerns the conduct of the Respondent when he was an Approved Person of Quadrus and specifically the contraventions of regulatory requirements that resulted when the Respondent borrowed funds from clients without reporting the conduct to the Member and also when the Respondent entered into a Consumer Proposal under the *Bankruptcy and Insolvency Act* without timely disclosure to the Member.

Facts

6. The facts are set out in detail in the Settlement Agreement and can be found on the MFDA website and therefore need not be set out in full here.

7. In brief, the Respondent borrowed funds from two clients, EV and TM. The EV loan of \$25,000 took place on November 27, 2006 when EV was not a mutual fund client of the Respondent. The Respondent and EV were friends. It was recorded in a promissory note that the Respondent would pay EV the amount of \$25,000 plus interest at the rate of 10% per annum. Two years later, EV became the Respondent's client at Quadrus, but the Respondent did not disclose the EV loan to Quadrus. Disclosure of the loan was not disclosed by the Respondent until November 2015. Various payments were made by the Respondent to EV and on April 29, 2016 the Respondent fully repaid the loan, including all interest charges.

8. Respondent became TM's mutual fund salesperson at Quadrus in December 2006. TM and the Respondent were friends. In March 2008, the Respondent and his spouse borrowed \$110,000 from TM and did not disclose this loan to Quadrus at the time. As with EV, disclosure to the Member was not made until November 2015. The loan was to be repaid by monthly payments with interest at 8% per annum. A further loan of \$40,000 was made in July 2010, again at 8% interest. As outlined in detail in the Settlement Agreement, various payments were made by the Respondent and his wife over the years and by June 2017 the two loans were fully repaid, including interest charges.

9. Not only did the Respondent not disclose these loans, he did not disclose to Quadrus that he and his spouse had filed a Consumer Proposal in November 2011 under the *Bankruptcy and Insolvency Act*, which was accepted by the creditors of the Respondent and his wife.

10. In the course of a review by the Respondent's Branch on November 5, 2015, the Respondent advised his branch manager that he had filed the Consumer Proposal in 2011. This was the first time that the Respondent reported the Consumer Proposal to Quadrus. On November 10, 2015, the Respondent advised his branch manager that two of the creditors named in the Consumer Proposal (EV and TM) were the Respondent's clients at Quadrus.

11. Quadrus then sent letters to all of the Respondent's clients to determine whether he had engaged in personal financial dealings with any clients besides EV and TM. None of the clients reported any concerns.

The Law

12. Borrowing money from a client has consistently been held by other panels to be a conflict of interest under Rules 2.1.1 and 2.1.4. The MFDA Member Regulation Notice 0047, dated October 3, 2005, takes a hard line on borrowing from clients, stating under the heading "Borrowing from Clients":

"Borrowing from a client by either the Member or Approved Person raises a significant and direct conflict that in almost all cases will be impossible to resolve in favour of the client. While such activity is not explicitly prohibited under MFDA rules, MFDA staff are unaware of any circumstances where Members or Approved Persons proposing to enter into any such arrangements would be able to demonstrate that the conflict has been properly dealt with."

13. Although Quadrus did not have a specific written rule against borrowing until April 2008, the Respondent had an obligation to report his borrowing under the MFDA rules as soon as EV became a client and when TM made the two loans.

14. With respect to the failure to report the Consumer Proposal, MFDA Policy No. 6, "Information Reporting Requirements," provides as follows in subsection 4.1(g):

"An Approved Person shall report the following events to his or her current Member in such detail as required by the Member, within 2 business days: ...

(g) the Approved Person becomes bankrupt or suspends payment of debts generally or makes an arrangement with creditors or makes an assignment or is deemed insolvent."

15. Failure to report material events to the Member in a timely fashion prevents the Member from protecting its own interests, the interests of clients, and the public interest.

Settlement Agreement

16. The Respondent accepted responsibility for his conduct, admitting in paragraph 45 of the Settlement Agreement that:

- a) between March 2008 and May 2016, the Respondent borrowed \$150,000 from one client and was indebted to another client in the amount of \$25,000, thereby engaging in personal financial dealings with the clients which gave rise to a conflict or potential conflict of interest that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interest of the clients, contrary to MFDA Rules 2.1.1 and 2.1.4; and
- b) between January 2012 and November 2015, the Respondent failed to report to the Member the fact that he had made an arrangement with his creditors, contrary to MFDA Policy No. 6, subsection 4.1(g).

17. The Terms of Settlement in paragraph 46 provide:

“The Respondent agrees to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$20,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.1.4 and MFDA Policy No. 6; and
- d) the Respondent will attend in person on the date set for the Settlement Hearing.

Acceptance of Settlement Agreement

18. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

19. The conduct in this case was serious. The Respondent clearly knew that borrowing from clients without disclosure to the Member was contrary to both the MFDA and the Member's rules. And the Respondent should have known that not disclosing in a timely manner the Consumer Proposal was contrary to MFDA rules.

20. To the Respondent's credit is the fact that he fully repaid the loans, including all interest charges and that no client complained. He did not profit from this activity. It should also be noted that the Respondent borrowed the money as the result of rising personal debts which were caused, in part, by the fact that the Respondent had to support three of his sister's children, after his sister was killed in a car accident in 1996.

21. Moreover, the Respondent has been in the securities industry since 1997 and has never been the subject of discipline. Further, the Respondent disclosed, albeit belatedly, his misconduct to the Member.

22. This is not a case where any form of suspension is necessary. The penalty in the present case will provide general deterrence to others. The monetary penalty is in line with the cases cited to us by counsel.

23. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct, recognizes its seriousness, and has exhibited remorse. And by entering into the Agreement, the Respondent saved the MFDA the time, resources and expense associated with conducting a full hearing of the allegations.

24. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

“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.”

25. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

26. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: “It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness.” There are many similar statements by MFDA Panels stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: “A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.” This is particularly so, we should add, when experienced counsel have been the negotiators.

27. The penalty agreed to in this case clearly falls within “a reasonable range of appropriateness.”

28. For the above reasons we accepted the Settlement Agreement.

DATED this 19th day of March, 2018.

“Martin L. Friedland”

Martin L. Friedland, CC, QC
Chair

“Colleen Waring”

Colleen Waring
Industry Representative

“Joe Yassi”

Joe Yassi
Industry Representative

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