



**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: James Russell Taylor**

Heard: July 23, 2019 in Toronto, Ontario  
Decision: July 23, 2019  
Reasons for Decision: August 1, 2019

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC  
Brigitte J. Geisler  
Guenther W.K. Kleberg

Chair  
Industry Representative  
Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Clarke Tedesco	)	Counsel for the Respondent
	)	
	)	
James Russell Taylor	)	Respondent, in person
	)	
	)	

## **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 Tuesday, July 23, 2019. The full Settlement Agreement, dated July 17, 2019, entered into between Staff of the MFDA and James Russell Taylor (the “Respondent”) is available on the MFDA website. The Respondent appeared at the Hearing and was represented by counsel.
2. The Panel accepted the proposed Settlement Agreement at the conclusion of the hearing, with reasons to follow. These are our reasons for our decision to accept the Settlement Agreement.
3. The Respondent has been a mutual fund salesperson since 1990. Between April 12, 2002 and January 9, 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with FundEX Investments Inc. (the “Member”), a Member of the MFDA. The Respondent resigned from the Member on or about January 9, 2016.
4. At all material times, the Respondent conducted business in Etobicoke, Ontario. The Respondent is not currently registered in the securities industry in any capacity.
5. A Notice of Hearing was issued by the MFDA on December 5, 2018. After several adjournments, a Settlement Agreement was entered into on July 17, 2019.

## **The Settlement Agreement**

6. In Paragraphs 41 to 43 of the Settlement Agreement, the Respondent admits that:  
  
“commencing in 2011, he acted as an executor for deceased client TJ’s estate, contrary to the Member’s policies and procedures and MFDA Rules 2.3.1, 2.1.4, 1.1.2 and 2.5.1, and 2.1.1;”  
  
“commencing in 2011, he was aware that he was named as executor and trustee and a beneficiary of client BT’s estate, and following client BT’s death, acted as executor and trustee for deceased client BT’s estate and accepted a benefit from the estate, contrary to the Member’s policies and procedures and MFDA Rules 2.3.1, 2.1.4, 1.1.2 and 2.5.1, and 2.1.1;” and

“commencing November 2015, he failed to cooperate with an investigation into his conduct by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.”

7. The Settlement Agreement sets out in paragraph 44 the following terms of settlement:

“The Respondent agrees to the following terms of settlement:

- a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$40,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
  - (i) \$20,000 in certified funds upon acceptance of the Settlement Agreement;
  - (ii) \$10,000 in certified funds on or before the last business day of the sixth month following the acceptance of the Settlement Agreement; and
  - (iii) \$10,000 in certified funds on or before the last business day of the twelfth month following the acceptance of the Settlement Agreement;
- c) the Respondent shall pay 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) the Respondent will attend in person, on the date set for the Settlement Hearing.”

### **Agreed Facts**

8. The agreed facts are set out in detail in paragraphs 6 to 38 of the Settlement Agreement and will not be repeated in full here. In brief, in 2011, the Respondent was the co-trustee for the estate of deceased client TJ, and further knew that client BT had named him the sole executor and

trustee and a beneficiary under her will. Client BT's will also made the Respondent responsible for the management of a charitable foundation to be formed with the residue of her estate following her death.

9. In that year, 2011, the Member revised its policies and procedures to prohibit its Approved Persons from being named and/or acting as an executor/trustee for a client's estate, and directed the Respondent to resign any positions he held as executor/trustee or move the clients' accounts to another Member.

10. The Respondent, however, continued to service two RESP accounts belonging to the estate of deceased client TJ. The Respondent also continued to service client BT's accounts and remained the executor and trustee of her estate and, after her death, accepted the Air Miles reward points he had been bequeathed.

### **The Misconduct**

11. MFDA Rule 2.3.1(a), as it read at the time of the events at issue, explicitly prohibited Members and Approved Persons from accepting or acting upon a general power of attorney or *other similar authorization* from a client in favour of the Member or Approved Person. MFDA cases, such as *Re Brauns* 2013 LNCMFDA 68, have concluded that "similar authorization" expanded the ambit of the Rule to the designation of executor and/or trustee of a client's estate.

12. The conduct is also contrary to the MFDA's rule on conflicts of interest. MFDA Rule 2.1.4 requires that an Approved Person disclose an actual or potential conflict to the Member, and together with the Member address the conflict by the exercise of responsible business judgment influenced only by the best interest of the client and in compliance with MFDA Rules 2.1.4 (c) and (d). (See *Re Ryan* 2011 LNCMFDA 54; *Re Tonnies* 2005 LNCMFDA 7.)

13. As the acting co-trustee and the named executor and trustee for clients TJ and BT, respectively, the Respondent was in a position of an actual or potential conflict of interest. A conflict of interest arises wherever an Approved Person advances or pursues their own interest in dealing with a client to whom they have an obligation of dealing fairly, to the detriment of the

client or to their own advantage. See *Re Martin* 2016 LNCMFDA 177; *Re Lambros* 2011 LNCMFDA 48; and *Re Gaunt* 2013 LNCMFDA 63.

14. The Respondent failed to take the appropriate steps concerning client BT to address the actual and/or potential conflict of interest, and failed to complete the steps directed by the Member concerning client TJ.

15. Not only was the conduct against MFDA Rules, it was also against the Member's policies and procedures, which Approved Persons are obligated to comply with. (See *Re Frank* 2015 LNCMFDA 75.) As stated in *Re Franco* 2011 LNCMFDA 55 at paragraph 38: "The obligation of Approved Persons to comply with the policies and procedures of the Member that they are registered with is a cornerstone of the self-regulatory system. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined."

16. In addition, the Respondent failed to cooperate with the MFDA investigation into his conduct. The Respondent admits that he disregarded Staff's correspondence, and failed to respond to Staff's request for a written statement, documents, and an interview. The obligation to cooperate with the MFDA is a necessary corollary to the MFDA's duty to conduct such examinations and investigations as the MFDA deems necessary relating to matters of compliance with the MFDA's by-laws, rules, or policies.

### **Acceptance of the Settlement Agreement**

17. 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.

18. The conduct in the present case is serious. Failure to cooperate is particularly serious. As stated in *Re Vitich* 2011 LNCMFDA 63 at paragraph 55: "Without the cooperation of Members and Approved Persons, the MFDA's ability to investigate and discipline its Members and Approved Persons is gravely fettered."

19. There are a number of mitigating factors. There is no evidence that the clients or their estates suffered any harm as a result of the Respondent's conduct. And there is no evidence that

the Respondent received any benefit, other than a fairly small number of Air Miles reward points and the usual and typical fees he received for his services as an executor and trustee.

20. The Respondent has not previously been the subject of a disciplinary proceeding.

21. By entering into the Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

22. The Respondent agreed to a substantial penalty. A permanent prohibition “from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member,” coupled with a \$40,000 penalty, is a very substantial penalty. This is not out-of-line with the new Sanctions Guidelines as well as the cases cited to us by counsel: *Re Giuliani* 2018 LNCMFDA 97; *Re Sukman* 2016 LNCMFDA 48; *Re Sakkejha* 2012 LNCMFDA 12; *Re Dixon* 2017 LNCMFDA 247; and *Re Killins* 2012 LNCMFDA 13.

23. The monetary penalty and the permanent prohibition provide a significant measure of specific deterrence to the Respondent, who in any event has left the industry, and general deterrence to others in the industry.

24. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Supreme Court stated in paragraph 49 of *British Columbia. Securities Commission v. Seifert* [2006] B.C.J. No. 225, aff'd [2007] B.C.C.A. No. 484:

“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. Respecting settlements is particularly desirable in cases, such as this one, where experienced counsel were involved and where there were substantial and complex negotiations.

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.”

27. The penalty and the costs agreed to in this case clearly fall within “a reasonable range of appropriateness.”

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

**DATED** this 1<sup>st</sup> day of August, 2019.

“Martin L. Friedland”

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Martin L. Friedland, CC, QC  
Chair

“Brigitte J. Geisler”

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Industry Representative

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