



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: Ahsan Ladha

Heard: July 31, 2012 in Calgary, Alberta
Reasons for Decision: August 15, 2012

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Daniel Ish, Q.C.
Richard Sydenham

Chair
Industry Representative

Appearances:

Shari L. Boyd)	For the Mutual Fund Dealers Association of
)	Canada
Ahsan Ladha)	Self-represented
)	

I. THE ALLEGATIONS

1. In a Notice of Settlement Hearing dated June 28, 2012, the Mutual Fund Dealers Association of Canada (the “MFDA”) alleged violation of the Rules of the MFDA by Mr. Ahsan Ladha, an Approved Person of the MFDA (the “Respondent”). The allegations were that the Respondent, between June 2009 and June 2010, engaged in securities related business that was not carried on for the account and through the facilities of the Member by giving investment advice in relation to, and making trades in, equity securities in the on-line discount brokerage accounts of client M.M. and individual J.B., contrary to MFDA Rule 1.1.1(a).

II. PROCEDURE

2. The Settlement Hearing in this matter was conducted on July 31, 2012 in Calgary, Alberta. Ms. Shari Boyd appeared for the MFDA and Mr. Ahsan Ladha appeared on his own behalf. The Panel proceeded with only two members pursuant to MFDA By-law No. 1, section 19.9(b) because the third member of the Panel was not available due to illness. The parties had no objection to the Panel proceeding.

3. The Panel was provided with a written Settlement Agreement that had been agreed to by the parties prior to the hearing. At the hearing, Ms. Boyd on behalf of the MFDA provided both written and oral submissions, and Mr. Ladha made oral submissions.

4. At the outset of the hearing the Panel made an order that the hearing would be held *in camera*. The Panel, after receiving the submissions with respect to liability and penalty, adjourned to consider the Settlement Agreement, including the proposed and agreed upon penalty. When the Panel reconvened, it made an order to move the proceedings into the public forum and to make public the previous proceedings. Also, the Panel made an order at the hearing on July 31, 2012, which will be confirmed and reproduced in this decision.

III. AGREED FACTS

5. The facts, as agreed to by the parties, are as follows:

Registration History

6. The Respondent was registered in Alberta as a mutual fund salesperson with TD Investment Services Inc. (“TDIS”) from January 29, 2008 to June 1, 2010 when the Respondent resigned during the investigation of the matters described herein.

7. The Respondent is not currently registered in the securities industry in any capacity.

8. TDIS became a member of the MFDA on January 11, 2002.

Securities Related Business Outside the Member

Individual JB

9. The Respondent was a personal friend of JB. The friendship between the Respondent and JB pre-dated the Respondent’s registration as a mutual fund sales person. At all material times, JB was not a client of TDIS.

10. In June 2009, the Respondent assisted JB with opening a TD Waterhouse Discount Brokerage Account and with signing up for Webbroker, the on-line trading platform used by TD Waterhouse Discount Brokerage to enable clients to trade in their accounts. JB shared the account password information required to access the TD Waterhouse Discount Brokerage account with the Respondent.

11. After assisting JB with opening of the TD Waterhouse Discount Brokerage account and enrolling in Webbroker, the Respondent provided JB with investment advice in relation to trading activity in the account and also personally conducted trades in the account. The trading activity involved equity securities which the Respondent followed.

12. The Respondent states that JB was generally aware and authorized the Respondent to access and conduct trades in the TD Waterhouse Discount Brokerage account. The Respondent initially obtained instructions or confirmation from JB prior to placing trades in the account. At some point this practice stopped and the Respondent began placing trades in the account without obtaining prior instructions from JB, either verbally or in writing, and then informing JB of the trading activity undertaken by the Respondent in the account after the fact.

13. With the assistance of TD Waterhouse Compliance, TDIS commenced an investigation of the Respondent's activity in relation to JB's TD Waterhouse Discount Brokerage account. TDIS determined that between January 2, 2010 and March 2, 2010, the Respondent accessed JB's TD Waterhouse Discount Brokerage account a total of 47 times. The Respondent accessed the account from the Respondent's home computer on 25 of those 47 occasions. On the remaining 22 occasions, the Respondent accessed the account from the Respondent's work computer at TDIS.

14. The records of JB's TD Waterhouse Discount Brokerage account did not contain a trading authorization in favor of the Respondent.

15. Neither TDIS nor TD Waterhouse Discount Brokerage is in receipt of a complaint from JB in relation to the activity of the Respondent with respect to JB's TD Waterhouse Discount Brokerage account.

Client MM

16. At all material times, MM was a client of TDIS and also had a TD Waterhouse Discount Brokerage account. Client MM and the Respondent together set up the Webbroker on-line trading password information for the account. As a result, the Respondent was able to access the account and conduct trades in it.

17. Between November 2009 and February 2010, the Respondent provided investment advice to client MM in relation to, and placed trades in, MM's TD

Waterhouse Discount Brokerage account through the Webbroker on-line trading platform. The trading activity involved equity securities which the Respondent followed.

18. TDIS's investigation determined that between January 6, 2010 and March 8, 2010, the Respondent accessed client MM's TD Waterhouse Discount Brokerage account a total of six times and that on three of those six occasions, the Respondent accessed the account from the Respondent's home computer.

19. The records of client MM's TD Waterhouse Discount Brokerage account did not contain a trading authorization in favor of the Respondent.

20. Client MM advised TD Waterhouse Compliance during its investigation of the Respondent's conduct that the Respondent provided investment advice to client MM in relation to, and conducted trades in, client MM's TD Waterhouse Discount Brokerage account.

21. At all material times that the Respondent was giving investment advice in relation to, and making trades in, the TD Waterhouse Discount Brokerage accounts of JB and client MM, the terms of the Respondent's registration as a mutual fund salesperson prohibited him from providing investment advice in relation to, and trading for others in, equity securities. The Respondent did not have the required proficiencies to advise and trade in equity securities.

22. At all material times, TDIS was not aware (nor was TD Waterhouse) that the Respondent was providing investment advice in relation to, and conducting trades in, the TD Waterhouse Discount Brokerage accounts of JB and client MM.

Mitigating Factors

23. The Respondent has not previously been the subject of the MFDA disciplinary proceedings.

24. The Respondent has co-operated with MFDA Staff's investigation into his conduct.

6. The Respondent acknowledged and admitted responsibility in these words:

V. CONTRAVENTIONS

25. The Respondent admits that between June 2009 and June 2010, he engaged in securities related business that was not carried on for the account and through the facilities of the Member by giving investment advice in relation to, and making trades in, equity securities in the on-line discount brokerage accounts of client MM and individual JB, contrary to MFDA Rule 1.1.1(a).

7. It is clear from the agreed facts as set out above that the Respondent did engage in securities related business that was not carried on for the account or through the facilities of the Member. The Respondent gave investment advice in relation to, and made trades in, equity securities in the on-line discount brokerage account of two individuals, one who was a client and one who was not. We find that Rule 1.1.1(a) has been violated. This breach was acknowledged by Mr. Ladha and we also find it to be substantiated.

IV. PENALTY AND ORDER

8. The parties made a joint submission, as part of the Settlement Agreement, with respect to penalty. Although the parties had agreed on the penalty, the Rules of Procedure of the MFDA require that the Panel must be satisfied that the penalty imposed on the Respondent for admitted infractions are appropriate in the circumstances. It is within the discretion of the Panel to accept or reject a Settlement Agreement.

9. The terms of settlement proposed by the parties were:

- (a) the Respondent shall be prohibited from conducting securities related business while in the employ of, or associated with, any MFDA Member for 24 months from the date of the final order in this matter, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

- (b) the Respondent shall pay costs in the amount of \$2,500.00, pursuant to s. 24.2 of MFDA By-law No. 1;
- (c) the Respondent shall in the future comply with MFDA Rule 1.1.1(a); and
- (d) the Respondent will attend in person on the date set for the Settlement Hearing.

10. Several previous decisions of industry tribunals, including MFDA tribunals, have found that a number of factors must be taken into account in determining the appropriate sanction to impose for an infraction or infractions of the rules. In determining the appropriate penalty in this matter, the Panel took into account the following factors:

- (a) whether the penalty imposed will protect investors and generally be in the public interest;
- (b) whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent, as set out in the agreement;
- (c) whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- (d) whether the proposed penalty will prevent the type of conduct described in the Agreement from occurring again in the future;
- (e) whether the Settlement Agreement will foster confidence in the integrity of the Canadian securities market;
- (f) whether the Settlement Agreement will foster confidence in integrity of the MFDA; and
- (g) whether the Settlement Agreement will foster confidence in the regulatory process itself.

11. The submissions by both the MFDA and the Respondent made a number of points to justify the penalty. It was submitted that any proposed penalty must be fair and reasonable, taking into account the primary interest of protection of the public and integrity of the industry. In this particular case, the Respondent engaged in securities related business that was not carried on for the account of the Member or through the facilities of the Member as a result of advising and trading equity securities on behalf of two individuals. There is no evidence that the Respondent engaged in any other securities related business outside of the Member while he was registered as a mutual fund salesperson. Other factors, most of which benefit the Respondent,

include:

- Neither individuals filed a complaint with the Member or with the MFDA in relation to the conduct of the Respondent as set out in the Settlement Agreement;
- The Respondent has not been the subject of any previous disciplinary proceedings;
- The Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring additional time and expense for a full hearing;
- The Respondent earned no compensation as a result of the activities described in the Settlement Agreement;
- The proposed 24 month penalty is a serious one which will serve to deter others in the capital markets from engaging in similar activities;
- The penalties proposed are appropriate and consistent with the MFDA penalty guidelines; and
- The penalties proposed are consistent with previous decisions made in similar circumstances.

12. The Panel adjourned the hearing to consider whether the Settlement Agreement would be accepted, including the penalty provisions. Upon returning to the hearing room, the Panel indicated that it was in agreement with the Settlement Agreement and made an Order to that effect. In making the Order with respect to penalty, the Panel was mindful of the specific factors that apply to this particular case and this particular Respondent. However, the Panel took into account numerous previous decisions of MFDA Panels and securities commissions, and the MFDA Penalty Guidelines. Among other decisions, the Panel considered in *Re Joseph Zollo*, MFDA File No. 200610 (March 20, 2007) and in *Re Hsueh*, MFDA File No. 201137 (May 1, 2012). We were also influenced by the fact that there was no evidence of actual harm done to the two concerned individuals, there was no complaint history against the Respondent and that he was cooperative with the investigation. As a result it is our conclusion that the proposed penalty is fair and reasonable. We hereby confirm the order that we made on July 31, 2012 which in its entirety is as follows:

WHEREAS on June 28, 2012, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Ahsan Hanif Ladha (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated May 18, 2012 (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent, between June 2009 and June 2010, engaged in securities related business that was not carried on for the account and through the facilities of the Member by giving investment advice in relation to, and making trades in, equity securities in the on-line discount brokerage accounts of client MM and individual JB, contrary to MFDA Rule 1.1.1 and the terms of his registration as a mutual fund salesperson;

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;
2. The Respondent shall be prohibited from conducting securities related business while in the employ of, or associated with, any MFDA Member for 24 months from the date of the final order in this matter, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
3. The Respondent shall pay costs in the amount of \$2,500.00, pursuant to s. 24.2 of MFDA By-law No. 1; and
4. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder,

including MFDA Rule 1.1.1.

DATED this 15th day of August, 2012.

“Daniel Ish”

Daniel Ish, Q.C.,
Chair

“Richard Sydenham”

Richard Sydenham,
Industry Representative

Doc 307232