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: Mary Lorelei Lambros

Heard: March 7, 2011 in Toronto, Ontario
Reasons for Decision: March 15, 2011

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance Sweeney	Chair
Guenther Kleberg	Industry Representative
Brian Nowak	Industry Representative

Appearances:

Francis Roy	)	For the Mutual Fund Dealers Association of
	)	Canada ("MFDA")
Ellen Bessner	)	For the Respondent, Mary Lorelei Lambros (the
	)	"Respondent" or "Lambros")

1. By Notice of Settlement Agreement, dated the 18th day of November,[1] the MFDA gave notice that the first appearance in this matter would take place by teleconference before a Hearing Panel of the Central Regional Council to set a date for a hearing to consider whether the Hearing Panel should accept a settlement agreement entered into between the Respondent and Staff of the MFDA.

2. The Settlement Agreement alleged that:

(a) From June 28, 2005 to December 20, 2007, while she was a joint owner with right of survivorship over a client's account:

i. the Respondent engaged in conduct that gave rise to an actual or potential conflict of interest between the Respondent and the client which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1; and

ii. the Respondent carried out trades in the client's account on at least four occasions in respect of which she alone authorized the trades and determined the securities traded, contrary to MFDA Rule 2.3.1(a) and 2.1.1.

(b) Between February 2006 and December 2007, the Respondent engaged in personal financial dealings with clients and engaged in securities related business that was not carried out for the account and through the facilities of the Member by participating in the development of a Bahamian Property, contrary to the Member's policies and procedures and MFDA Rules 1.1.1(a), 1.1.2, 1.1.5, 1.2.1(d), 2.1.4, 2.5.1 and 2.1.1.

3. We were constituted a Hearing Panel of the Central Regional Council to conduct the hearing.

4. The first teleconference hearing was held on December 13, 2010, when we fixed the hearing date as March 7, 2011.

5. At the opening of the hearing on March 7, 2011, we granted a joint motion of counsel for the MFDA and the Respondent to move into "in camera" to consider the Settlement Agreement.

[1] Exhibit 1

6. During the “in camera” session, counsel for the MFDA and for the Respondent urged us to accept the Settlement Agreement and the penalties proposed to be imposed. They referred to the salient facts, case law, the MFDA Penalty Guidelines and other factors including the applicable legal and public policy reasons to support their position that the Settlement Agreement including the proposed penalties was reasonable and proportionate.

7. We then retired to consider in private the Settlement Agreement. During our meeting, however, we identified a number of problematic aspects to the Settlement Agreement. We returned to the “in camera” session and asked counsel for the parties a number of questions which were adequately answered. We retired again and after due deliberation unanimously agreed to accept the Settlement Agreement.

8. The Chair, in open session, advised the parties that the Hearing Panel had unanimously accepted the Settlement Agreement. The Settlement Agreement was then marked as an exhibit.[2]

THE SETTLEMENT AGREEMENT

9. The Hearing Panel knows that it may only accept or reject a settlement agreement.[3]

10. Courts and Tribunals should tread lightly in considering to refuse to accept a settlement agreement negotiated at arm's length between two parties when they are represented by counsel.

11. Winkler R. S. J., as he then was, in another context set out the principles to be applied in considering a negotiated settlement. In *Gilbert v. Canadian Imperial Bank of Commerce*,[4] he said:

> There is a presumption of fairness when a proposed ... settlement negotiated at arm’s length is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.
>
> The test to be applied is whether the settlement is fair and reasonable. ... This allows for a range of possible results and there is no perfect settlement. Settlement is a product of compromise, which by definition, necessitates give and take.

[2] Exhibit 3
[3] MFDA By-law No. 1, para. 24.4.3(a) and (b)
[4] 2004 CanLII 34176 (ON S.C.) at paras. 9 and 10

12. The British Columbia Court of Appeal enunciated the principle in 2007[5] when Donald J.A. said:

> 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. ... Settlements are also efficient. Both parties can forego the time and expense of a hearing. ...
>
> The primary goal of securities regulation is the protection of the public.[6]

13. The Hearing Panel was very concerned by the behaviour of the Respondent. The agreed facts are set out in paragraphs 6 to 61 of the Settlement Agreement and we will not repeat them here.

14. The Respondent agreed to nine contraventions as follows:

(a) From June 28, 2005 to December 20, 2007, the Respondent was a joint owner with right of survivorship of client NM's account, thereby giving rise to an actual or potential conflict of interest between the Respondent and client NM which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of client NM, contrary to MFDA Rules 2.1.4[7] and 2.1.1;

(b) From October 19, 2006 to December 20, 2007, while a joint owner of client NM's account, the Respondent carried out trades in client NM's account on at least four occasions in respect of which she alone authorized the trades and determined the securities traded, contrary to MFDA Rule 2.3.1(a) and 2.1.1;

(c) By failing to renounce her appointment in the will of client NM as an executrix of NM's estate in the event that KB was unwilling or unable to perform her duties, the Respondent's actions gave rise to an actual or potential conflict of interest between

[5] *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484 at para. 49
[6] *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at para. 59
[7] MFDA Rule 2.1.4 was amended on February 27, 2006. It is alleged that the Respondent's conduct contravened MFDA Rule 2.1.4 both pre- and post-amendment.

herself and client NM (and later the estate of client NM) which she failed to address by the exercise of responsible business judgment influenced only by the best interests of client NM (and later the estate of client NM), contrary to MFDA Rules 2.1.4 and 2.1.1;

(d) By accepting her appointment as trustee of the trust established for DM, the son of client NM, the Respondent engaged in personal financial dealings with client NM, thereby giving rise to an actual or potential conflict of interest between herself and client NM (and later the estate of client NM) which she failed to address by the exercise of responsible business judgment influenced only by the best interests of client NM (and later the estate of client NM), contrary to MFDA Rules 2.1.4 and 2.1.1;

(e) By transferring all of the monies in client NM's account to her personal bank account following the death of client NM the Respondent engaged in conduct unbecoming an Approved Person, contrary to MFDA Rules 2.1.4 and 2.1.1;

(f) Between February 2006 and December 2007, the Respondent engaged in personal financial dealings:

i. with clients EW and TW by participating in the purchase of a Bahamian property (the "Property"), incorporating a Bahamian company known as Crossing Bay Limited (the "Crossing Corp.") with clients EW and TW, and participating in a development project of the Property (the "Bahamian Property Development Project"); and

ii. with clients DM, KM, TN, DN, EB, TG, MG, WD and SD by facilitating and obtaining their investments in Abaco Investments Inc. ("Abaco"), a corporation for which she was a shareholder, director and officer;

thereby giving rise to an actual or potential conflict of interest with each client which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1;

(g) Between February 2006 and December 2007, the Respondent engaged in outside business activities which she failed to disclose to the Member or on the National Registration Database, as required, by participating in the purchase and development project of the Property, and in the process incorporating, and being a shareholder, director and officer of, a Bahamian corporation known as Crossing Corp. as well as an Ontario corporation known as Abaco, thereby acting contrary to MFDA Rules 1.2.1(d), 2.1.1(c);

(h) Between October 31, 2006 and December 2007, the Respondent engaged in securities related business that was not carried out for the account and through the facilities of the Member by selling investments in Abaco to clients and other individuals, contrary to MFDA Rules 1.1.1(a) and 2.1.1; and

(i) Between June 2006 and December 2007, the Respondent failed to disclose to the Member her participation in the Bahamian Property Development Project, including her shareholdings and directorships in Crossing Corp. and Abaco, thereby acting contrary to the Member's policies and procedures and interfering with the ability of the Member to supervise her conduct and comply with its obligations under MFDA Rule 2.1.4, contrary to MFDA Rules 1.1.2, 1.1.5 and 2.5.1, and MFDA Rule 2.1.1.

15. The contraventions can be generally categorized into three types:

(a) conflicts of interests/personal financial dealings with clients;
(b) undisclosed business activities; and
(c) failure of the Respondent to comply with the Member's policies and procedures.

16. The Hearing Panel, on the evidence, finds that the Respondent as an experienced salesperson knew very well that what she did was wrong and in breach of the MFDA Rules and the policies and procedures of her Member/Employer.

17. The Hearing Panel will cite only two examples to illustrate the disgraceful behaviour of the Respondent.

The Respondent's Dealings with NM, KB and DM

18. Lambros was not related by blood or marriage to NM, an elderly woman. She was, however, close to NM and referred to her as her "aunt". The Respondent had serviced NM's account at the Member/Employer for 17 years until NM's death on December 20, 2007.

19. Following NM's request, in 2005, Lambros became a joint owner with right of survivorship on NM's account. This was done to avoid probate fees. There was no evidence adduced that KB, the daughter of NM, knew anything about it. Counsel for the Respondent offered the weak excuse that as the daughter resided in another city it would be more convenient. The Respondent subsequently executed trades in NM's account at least four times.

20. In 2006, Lambros accepted the appointment as alternate executrix under NM's will. She also agreed to be the trustee under the will for NM's son's, DM, share of the estate.

21. The foregoing actions were in direct contravention of the Member/Employer's published policies and procedures.

22. The Member/Employer had an obligation to supervise the Respondent as an employee. Lambros did not seek to conceal the fact that she had made herself the joint tenant with NM. In fact she changed the mailing address on the NM account to her home address and filed the necessary forms with the Member/Employer. Regrettably, the Member/Employer's internal controls were so weak that it failed to detect the actions of the Respondent. Had the Member/Employer been more diligent, some of the problems created by Lambros could have been avoided.

23. On the death of NM, the Respondent wasted no time in redeeming all of the investments in the NM account and placing them in a joint account with her husband. She did not inform KB for nearly three weeks.

24. Shortly thereafter Lambros paid herself $15,000.00 from NM's money. When KB found out, she asked for an accounting of the $15,000.00 and her share of the estate.

25. Lambros did initially refuse to release KB's estate entitlement unless KB signed a full and final release, without Lambros' accounting of the $15,000.00 payment to herself. KB refused. Lambros did not release to KB her share of the estate until April 16, 2010. There is pending litigation over the $15,000.00 as Lambros to date has not provided an accounting to KB or Staff of the MFDA.

26. Counsel for the MFDA said that he was not taking any position in regard to the $15,000.00 as it was a matter of estates law. The Hearing Panel is disappointed that Staff did not insist, as a minimum, that Lambros provide them with particulars of the $15,000.00 and how it was disbursed. After all, these moneys came from a client of a licensed salesperson employed by the Member/Employer.

Undisclosed Outside Business Activities

27. In October 2006, the Respondent incorporated, with clients, a Bahamian corporation to facilitate the purchase of property in the Bahamas. By May 2007, however, more money was needed. The Respondent caused an Ontario Corporation to be incorporated and raised substantial funds from her clients in this regard. She did not comply with MFDA Rules on disclosure and approval from the Member/Employer. Her behaviour is especially egregious as on January 17, 2007, Staff had issued a warning letter to Lambros regarding the recommendation of another unsuitable investment for a client.

28. The Respondent knew what she was doing was in direct breach of the relevant MFDA Rules. This is corroborated by the admitted fact that she lied to the Member/Employer in May 2007, when she answered in writing in the negative to the question as to whether she was "a shareholder in any other business, securities-related or non-securities-related".

29. Counsel for the MFDA agreed with the Hearing Panel that the actions of the Respondent breached the *Ontario Securities Act (Ontario).*

The Hearing Panel Agreement

30. The Hearing Panel did consider the following mitigating factors:

(a) No clients lost any money as a result of the Respondent's actions. This is, of course, subject to the ultimate determination of the court in respect to the $15,000.00.

(b) The Respondent cooperated with Staff and saved it the expense of a protracted hearing. We point out, however, that the settlement also saves the Respondent the anxiety and cost of a hearing.

(c) The Respondent paid the fine and costs into escrow pending the decision of this Hearing Panel.

(d) The Respondent derived no personal benefit from her actions other than the approximately $3,800.00 commission charged to a client as a result of a redemption needed to finance the illegal solicitation for the investment in the Bahamian property. It will be subject to the determination of a court to establish if the Respondent did or did not obtain an illegal personal benefit because of the $15,000.00 payment to herself.

(e) Save for the warning letter of 2007, the Respondent has no previous history with the MFDA.

(f) The lax controls of the Member/Employer contributed, in part, to the unsatisfactory outcome in respect to NM and her estate.

31. The fines agreed to by the Respondent exceed the minimum recommended fines in the MFDA Penalty Guidelines for breaches of the sort committed by the Respondent.

32. The suspension period appears short. Counsel for the MFDA referred us to his brief and the similar cases therein. He pointed out that in all of those other cases the clients lost most or all of their money. That is not the case here.

33. He urged us to regard the fines and suspension together which he said represented a substantial penalty and one that was reasonable and proportionate in the circumstances.

34. He said that by entering into the Settlement Agreement, the Respondent recognized the

seriousness of her misconduct.

35. Had our jurisdiction not been limited we might have opted for a longer suspension period. We are satisfied, however, that the penalty is appropriate and will deter the Respondent from future similar conduct. It should also be fair warning to others in the industry who might consider engaging in such conduct.

36. Probably the most serious penalty to the Respondent is the deleterious effect these proceedings have had and will continue to have on her and her reputation as a registrant and supervisor of others.

37. In summary, therefore, and in the context of the mitigating factors listed above, we agree that the penalties and costs proposed are reasonable and proportionate.

DATED this 15th day of March, 2011.

"Terrance Sweeney"
Terrance Sweeney,
Chair

"Guenther Kleberg"
Guenther Kleberg,
Industry Representative

"Brian Nowak"
Brian Nowak,
Industry Representative

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