



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: Laurier Capital Planning Inc.

Heard: April 27, 2011, Calgary, Alberta

Reasons for Decision: August 30, 2011

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Richard L. Yaffe
Howard R. Mix
Alan Caplan

Chair
Industry Representative
Industry Representative

Appearances:

Lyla Simon)	For the Mutual Fund Dealers Association of Canada
)	
Denis Albinati)	For the Respondent, Laurier Capital Planning Inc.
)	

1. By Notice of Hearing dated January 26, 2011, a Hearing Panel of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened in Calgary, Alberta on April 27, 2011 to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept a settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA and Laurier Capital Planning Inc. (the “Respondent”) on January 7, 2011.

2. At the conclusion of the hearing, the Hearing panel approved a Settlement Agreement entered into by the parties which, *inter alia*, provided as follows:

TERMS OF SETTLEMENT

The Respondent agrees to the following terms of settlement:

- (i) The Respondent shall pay a fine in the amount of \$7,500, pursuant to section 24.1.2(b) of MFDA By-law No. 1;
- (ii) The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1; and
- (iii) A representative of the respondent shall attend in person at the Settlement Hearing.

3. At the outset of the proceedings, we considered and granted a joint Motion by Staff and the Respondent that the proceedings be moved *in camera*.

AGREED FACTS

4. The facts, as agreed upon by the parties, are as follows:

Registration History

- (i) The Respondent became a Member of the MFDA on January 24, 2008;
- (ii) The Respondent’s head office was located in Calgary, Alberta, with a branch in Quesnel, British Columbia, and a sub-branch in Calgary

- (iii) On October 10, 2008, the MFDA issued a Bulletin advising of the Respondent's intention to resign from membership in the MFDA.
- (iv) The MFDA approved, and the Respondent completed, a bulk transfer of its client accounts to another MFDA Member on October 31, 2008.
- (v) The Respondent's rights and privileges were suspended by Order of an MFDA Hearing Panel on November 14, 2008, following which the Respondent's resignation from Membership was accepted on March 2, 2009.
- (vi) Commencing January 24, 2008, the Respondent was registered as a mutual fund dealer in Alberta, British Columbia, and Saskatchewan; its registration was subsequently terminated in each of these jurisdictions as follows:
 - British Columbia – October 31, 2008;
 - Alberta – January 23, 2009; and
 - Saskatchewan – March 3, 2009.

MFDA Compliance Examination 2008

- (vii) Commencing May 26, 2008, MFDA Compliance Staff attended at the Respondent's head office and completed a compliance examination covering the period January 24, 2008 to May 15, 2008 ("the material time").
- (viii) The results of the 2008 compliance examination were summarized and delivered to the Respondent in a report dated September 29, 2008, which identified a number of deficiencies, including those related to tier-one supervision, tier-two supervision, and the lack of a fully operational back office system sufficient to permit the Respondent to comply with its obligations under the MFDA's By-laws, Rules and Policies.

Back Office System

- (ix) During the material time, the Respondent employed various back office systems to conduct its business, none of which were sufficiently functional to permit the Respondent to meet its regulatory obligations.

- (x) In May 2008, when MFDA Compliance Staff attended at the Respondent's head office, the back office system in place was not sufficiently functional to permit the Respondent to meet its regulatory obligations.
- (xi) The Respondent's Know Your Client ("KYC") and New Account Application Forms (each, an "NAAF") required clients to state their risk tolerance using a percentage basis only.¹ However, the Respondent relied solely on hard copies of KYCs and NAAFs in client files when conducting trade reviews and, due to the failings of its back office system, was unable to review the actual investments in a client's account at the time of a trade to assess the suitability of the trade against the client's percentage risk allocations as stated on the client's KYC and/or NAAF.
- (xii) Additionally, due to the deficiencies in its back office system, the Respondent was unable to, among other things, conduct trade reconciliations, or generate (and review) trend reports, error reports, and trade volume reports and therefore was unable to conduct reviews for, among other things, excessive trading and off-book trading activity.

Tier-One Supervision

- (xiii) During the material time, the Respondent failed to establish, implement, and maintain adequate tier-one supervision.
- (xiv) In addition to, or due to, the failures associated with not having a functional back office system, tier-one supervision was inadequate in that the Compliance Officer responsible for tier-one supervision at the Respondent did not conduct suitability reviews of trades; rather, the Compliance Officer reviewed trade documents solely for completeness of information.
- (xv) During the material time, the Respondent was aware that it was not adequately conducting tier-one supervision but failed to take steps to correct the problems.

Tier-Two Supervision

¹ For example, a client might indicate that they wished 25% of their account to be in high risk investments, 25% in medium risk investments, and the remaining 50% in low risk investments.

- (xvi) During the material time, the Respondent failed to establish, implement, and maintain adequate tier-two supervision.
- (xvii) In addition to, or due to, the failures associated with not having a functional back office system, the Respondent's tier-two supervision was inadequate in that:
- The Respondent did not review trade blotters or conduct trade reconciliations;
 - The Respondent failed to adequately review the suitability of trade recommendations in client accounts;
 - The Respondent allowed Approved Persons to submit their trading instructions directly to the mutual fund companies, such that all trading activity was effectively 'off-book' and the Respondent was unable to detect unauthorized off-book trading; and
 - The Respondent was unable to conduct reviews for excessive trading activity.
- (xviii) During the material time, the Respondent was aware that it was not adequately conducting tier-two supervision but failed to take steps to correct the problems.

ADDITIONAL FACTS

5. In response to questions posed to Staff by members of the Hearing Panel, the facts that were included in the Settlement Agreement were augmented by certain additional details introduced by Staff during the settlement hearing. The additional details agreed to by the parties are:

- (i) Denis Albinati was a shareholder and an approved person of the Respondent at all material times. As a result of terms and conditions imposed by the MFDA, Mr. Albinati was not permitted to have a direct role in compliance functions other than as an approved person, and he was not permitted to act as a director or officer of the Respondent. Further, Mr. Albinati was required by the MFDA to provide written acknowledgement of his awareness and compliance with the compliance program in place at the Respondent and with MFDA by-laws and rules.
- (ii) In late January or early February of 2008, the MFDA imposed certain terms and conditions on the Respondent. However, it was not jointly confirmed by the

parties whether these terms and conditions were imposed in connection with the Respondent's application for MFDA membership, or whether the MFDA imposed the terms and conditions following the Respondent's membership in the MFDA.

CONTRAVENTIONS

6. The Respondent admits that from January 24, 2008 to May 15, 2008 it failed to ensure that:

- (i) tier-one supervision was adequately established, implemented, and maintained; and
- (ii) tier-two supervision was adequately established, implemented, and maintained,

contrary to MFDA Rules 2.2.1, 2.5, MFDA Policy No. 2, and MFDA Rule 2.1.1.

DISCUSSION

7. MFDA hearing panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

- (i) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- (ii) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- (iii) whether the settlement agreement addresses the issues of both specific and general deterrence;
- (iv) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- (v) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- (vi) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- (vii) whether the settlement agreement will foster confidence in the regulatory process itself.

8. Staff indicated that it considers general deterrence, as analyzed in the Supreme Court decision of *Cartaway Resources*² and other MFDA cases³, to be an especially important factor in the present case. Staff asserted that the penalty levied must be sufficient so as to affirm public confidence in the regulation of the mutual fund industry, and to ensure that the misconduct is not repeated by others in the industry.

9. There are a number of general principles that apply when imposing a penalty. It is accepted practice that hearing panels should not interfere lightly in a negotiated settlement if the penalties agreed upon are within a reasonable range of appropriateness. In this regard, hearing panels frequently consider the following factors when determining whether a proposed penalty is appropriate:

- (i) the seriousness of the allegations proved against the Respondent;
- (ii) the Respondent's past conduct, including prior sanctions;
- (iii) the Respondent's experience and level of activity in the capital markets;
- (iv) whether the Respondent recognizes the seriousness of the improper activity;
- (v) the harm suffered by investors as a result of the Respondent's activities;
- (vi) the benefits received by the Respondent as a result of the improper activity;
- (vii) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- (viii) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (ix) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (x) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (xi) previous decisions made in similar circumstances⁴.

² *Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672 at paras. 52-62 (see especially para. 60-61), Staff's Book of Authorities, Tab 10.

³ **Eg., *Tonnies (Re)***, 2005 LNCMFDA 7, Decision of the Prairie Regional Council dated June 27, 2005 at para. 47, Staff's Book of Authorities, Tab 18.

⁴ *Headley (Re)*, [2006] MFDA Ontario Regional Council Decision dated February 21, 2006 at pp. 25-26, Staff's Book of Authorities, Tab 13. *Excel Financial Growth* at para. 8, Staff's Book of Authorities, Tab 12.

10. The MFDA Penalty Guidelines are an additional source of guidance regarding the appropriate penalty in a given matter. The penalty types and ranges stated in the Penalty Guidelines are not mandatory or binding on a hearing panel, but rather are intended to provide a basis upon which discretion may be exercised consistently and fairly in like circumstances. Depending on the facts and circumstances of a case, a hearing panel may determine that a penalty below or above the stated range is appropriate.

11. The Hearing Panel acknowledges that none of the Respondent's clients suffered damage or loss as a result of the Respondent's conduct. The Hearing Panel also notes that it was the intervention of the MFDA that resulted in the early cessation of the Respondent's activities.

DISPOSITION

12. The Hearing Panel is aware that the fine agreed upon falls below the aggregate of the fines recommended pursuant to the MFDA Penalty Guidelines for the various contraventions of the Respondent. Nevertheless, we are satisfied that the penalty agreed upon is reasonable and that the public's interest is served by the Settlement Agreement, and we agree unanimously that the Settlement Agreement should be accepted.

DATED this 30th day of August, 2011.

“Richard Yaffe”

Richard L. Yaffe,
Chair

“Howard Mix”

Howard R. Mix,
Industry Representative

“Alan Caplan”

Alan Caplan,
Industry Representative