



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: Peter Bruno Lamarche

REASONS FOR DECISION

HEARING PANEL of the CENTRAL REGIONAL COUNCIL:	The Hon. John B. Webber, Q.C., Chair Guenther Kleberg, Industry Representative Richard Williams, Industry Representative
HEARD:	February 2, 2009 Toronto, Ontario
REPRESENTATION:	Shelly Feld for the MFDA Ellen J. Bessner for the Respondent

A Notice of Settlement Hearing dated November 19, 2008, directed a hearing before a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) on Tuesday, December 16, 2008, commencing at 10:00 a.m., Toronto, in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario.

The hearing was to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, the Panel should accept a Settlement Agreement entered into by Staff of the MFDA and the Respondent, Peter Bruno Lamarche.

The settlement hearing, as noted above, scheduled to take place on December 16, 2008, was rescheduled to take place on Monday, February 2, 2009 at 2:00 p.m. in the hearing room located at the offices of the MFDA, 121 King Street West, Suite 1000, Toronto, Ontario.

The proposed Settlement Agreement was between Staff of the MFDA and Peter Bruno Lamarche and involved matters for which Mr. Lamarche may be disciplined by the Regional Council pursuant to MFDA by-laws.

At the outset of the proceedings we considered a joint motion by Staff and the Respondent to move the proceedings “in camera”. We granted that motion. We then considered, in detail, the provisions of the Settlement Agreement itself. We heard submissions as to the applicable law which should guide this panel in determining whether to accept or reject the Settlement Agreement. We next heard submissions as to why this particular Settlement Agreement met the appropriate criteria. We then retired to consider both the Settlement Agreement and the applicable legal principles. After deliberation, we unanimously concluded that it was appropriate to accept the Settlement Agreement.

As a panel, we are obviously concerned with the type of conduct which is reflected in the Settlement Agreement. We believe, however, that the Settlement Agreement fairly addresses the concerns that we have.

In determining whether the Settlement Agreement should be accepted, we have considered a number of factors. These include the following:

1. We have considered the public interest and whether, in our view, the penalty imposed will protect investors.
2. We have considered whether, in our view, the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement.
3. We have considered whether, in our view, the Settlement Agreement addresses the

issues of both specific and general deterrence.

4. We have considered whether, in our view, the proposed settlement will prevent the type of conduct, which is set out in the Settlement Agreement, from occurring again in the future.

5. We have considered whether, in our view, the Settlement Agreement will foster confidence in the integrity of the Canadian Capital markets.

6. We have considered whether, in our view, the Settlement Agreement will foster confidence in the integrity of the MFDA.

7. Finally, we have considered whether, in our view, the Settlement Agreement will foster confidence in the regulatory process itself.

In our view, the Settlement Agreement addresses all of the above factors. We believe that each and every one of these factors is dealt with in an appropriate fashion by the Settlement Agreement.

We also believe that, in a hearing of this nature, it is appropriate to consider any and all mitigating factors. A number of these factors are set out below, taken from the written submissions of Staff of the MFDA subject to comment found in the written submissions of counsel for Mr. Lamarche:

22. It is submitted that the Hearing Panel should take into account the following mitigating factors in the present case when evaluating the appropriateness of the penalty:

- (a) The Respondent has no previous disciplinary history;
- (b) Neither the Respondent personally, nor any Approved Person under his direct supervision, sold the FactorCorp. Debentures to investors;
- ...
- (d) The Respondent has cooperated fully with the MFDA during the course of its investigation;

- (e) The admissions made by the Respondent reflect acceptance of responsibility and remorse for the misconduct that he engaged in; and
- (f) By making the admissions contained in the Settlement Agreement, the Respondent has avoided the necessity of the MFDA conducting a lengthy hearing.

Counsel for the MFDA also submitted in paragraph (c) of paragraph 22 as a mitigating factor the following: “The Respondent did not personally profit substantially from the misconduct described in the Settlement Agreement”. Counsel for the Respondent took the position in her written submissions that this submission ought to be disregarded by the hearing panel as it is factually incorrect and not contained in the Settlement Agreement. We did not receive any evidence as to any profits that were made from the conduct alleged, and accordingly we cannot agree that this is a mitigating factor to be considered by the panel. It may well be that there was some profit, or it may well be that there was no profit. We do not believe that it is appropriate for us to engage in speculation and accordingly we ignore paragraph 22(c) as suggested by counsel for the Respondent.

We have finally considered that this was a Settlement Agreement that was reached by the parties after significant discussion and negotiation. The Settlement Agreement represents what they feel with their knowledge and their experience is an appropriate resolution. It is our view that the Settlement Agreement is reasonable and in the public interest. For all of these reasons we accepted the Settlement Agreement and signed the appropriate Order as presented at the hearing. We indicated to counsel that these reasons would follow upon the signing of the Order.

DATED at Toronto, Ontario this 23rd day of February, 2009.

“John B. Webber”
The Hon. John B. Webber, Q.C., Chair

“Guenther Kleberg”
Guenther Kleberg, Industry Representative

“Richard Williams”
Richard Williams, Industry Representative