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: Jamie Lee Leonard

Heard: June 24, 2020 by electronic hearing in Toronto, Ontario
Decision: June 24, 2020
Reasons for Decision: October 2, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, QC	Chair
Edward Jackson	Industry Representative
Katherine Samayoa	Industry Representative

Appearances:

Lyla Simon	)	Senior Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Jamie Lee Leonard	)	Respondent

I. INTRODUCTION

1. By Notice of Settlement Hearing, dated April 14, 2020, the Mutual Fund Dealers Association of Canada ("MFDA") gave notice that an electronic hearing would be held before a hearing panel of the Central Regional Council of the MFDA ("Hearing Panel") on June 24, 2020, to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept the settlement agreement ("Settlement Agreement") entered into between Staff of the MFDA and Jamie Lee Leonard ("Respondent").

2. Due to the existence of COVID-19, and with the consent of the parties, the Settlement Hearing was conducted by way of video conference on June 24, 2020.

3. At the commencement of the Settlement Hearing, the Hearing Panel granted the joint request of the parties to move the proceedings "in camera" so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the MFDA *Rules of Procedure*.

4. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

5. After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on June 24, 2020. At that time, we advised that written Reasons would follow. These are those Reasons.

II. THE SETTLEMENT AGREEMENT

6. The salient portions of the Settlement Agreement are as follows:

"IV. AGREED FACTS

Registration History

6 From September 22, 2009 to June 22, 2018, when he was terminated in connection with the matters herein, the Respondent was registered in Ontario and Quebec as a dealing representative (previously referred to as a mutual fund salesperson) with Scotia Securities Inc., a Member of the MFDA (the "Member").

7. From April 2013 to June 2018, the Respondent was also designated as an assistant branch compliance officer at the Member.

8. Previously, the Respondent was registered from June 2004 to July 2009 as a dealing representative with Quadrus Investment Services Ltd ("Quadrus"). While registered with Quadrus, the Respondent was also licensed to sell insurance.

9. At all material times, the Respondent carried on business in the Ottawa, Ontario area.

Member's Policies and Procedures

10. At all material times, the Member required its dealing representatives to refrain from engaging in conflicts of interest and execute trades in a timely manner.

Contravention #1: Respondent Engaged in Conflicts of Interest

11. From December 2015 to February 2017, the Respondent processed 43 transactions in respect of 38 clients as redemptions and purchases, rather than as switches.

12. By processing the transactions as redemptions and purchases, rather than as switches, the Respondent exposed the clients to the risk of a change in value of the funds as the clients' assets were not invested while the trades settled. Had the Respondent completed the transactions as switches (rather than as redemptions and purchases), the transactions would not have exposed the clients to this risk as the assets would have remained invested.

13. Processing the transactions as redemptions and purchases, rather than as switches, resulted in client losses as described in greater detail below.

14. The Respondent states that he did not conduct the transactions as redemptions and repurchases instead of as switches, in order to increase his compensation; however, he acknowledges that had the transactions been conducted as switches, the transactions would not have counted towards Member sales targets or awards that were available to him at the material time.

Contravention #2: Respondent Failed to Execute Timely Trades

15. From December 2015 to February 2017, the Respondent failed to execute 18 of the 43 mutual fund purchases described above on a timely basis, as required by the Member's policies and

procedures, which resulted in 21 clients incurring losses in their mutual fund accounts as described in greater detail below.

16. The delays in the purchases ranged from approximately seven days to 10 months. The particulars regarding the delays in the transactions are as follows:

Redemption Date	Repurchase Date	Client	Delay
December 22, 2015	December 30, 2015	KH	8 days
February 19, 2016	March 11, 2016	MC & JC	3 weeks
February 23, 2016	March 9, 2016 April 25, 2016 August 25, 2106	CL	15 days 2 months 6 months
February 26, 2016	March 4, 2016	LD	7 days
February 29, 2016	December 28, 2016	MS	10 months
March 22, 2016	April 20, 2016	ST	1 month
April 1, 2016	April 20, 2016	PA	19 days
April 1, 2016	April 20, 2016	GA	19 days
April 8, 2016	April 15, 2016	KS	7 days
April 13, 2016	May 6, 2016	LS	23 days
April 25, 2016	September 6, 2016	KG	4½ months
April 25, 2016	September 6, 2016	NG	4½ months
May 16, 2016	July 15, 2016	SR (RRIF)	2 months
May 16, 2016	July 16, 2016	SR (TFSA)	2 months
June 16, 2016	September 22, 2016	CW	3 months
June 24, 2016	July 29, 2016	LB (TFSA)	5 weeks
June 24, 2016	July 29, 2016	LB (non-registered)	5 weeks
November 7, 2016	November 21, 2016	LS2	14 days
February 10, 2017	February 22, 2017	SS	12 days

Client Losses

17. The Respondent's conduct described in Contraventions #1 and #2 above resulted in client losses to a maximum of $3,100 per client and $13,000 total.

18. In or about February 2019, the Member reimbursed the clients for their losses.

Additional Factors

19. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

20. Aside from a client complaint that is unrelated to the matters herein and which the Member has resolved, there have been no client complaints to the Member or to the MFDA.

21. The Respondent states that he plans to pursue further education in a different field.

22. The Respondent has provided evidence to Staff that he has limited financial means, he is attempting to support his family, and currently earns just above minimum wage.

23. The Respondent cooperated fully with Staff's investigation, and sought an early resolution of this matter.

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

CONTRAVENTIONS

25. The Respondent admits:

i. from December 2015 to February 2017, the Respondent processed 43 transactions in respect of 38 clients as redemptions and purchases, rather than as switches, which exposed the clients to risk of market loss and which the Respondent knew would result in the transactions counting towards the Member's sales targets for the Respondent, contrary to the Member's policies and procedures, and MFDA Rules 2.1.4, 2.1.1, 1.1.2 and 2.5.1; and

ii. from December 2015 to February 2017, the Respondent failed to execute 18 mutual fund purchases on a timely basis as required by the Member's policies and procedures, which resulted in 21 clients incurring losses in their accounts, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 1.1.2 and 2.5.1.

TERMS OF SETTLEMENT

26. The Respondent agrees to the following terms of settlement:

i. the Respondent shall be prohibited for a period of two years from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member commencing from the date of the final Order herein, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

ii. the Respondent shall pay a fine in the amount of $2,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

iii. the Respondent shall pay costs in the amount of $2,500, pursuant to s. 24.2 of MFDA By-law No. 1;

iv. the Respondent shall in the future comply with MFDA Rules 2.1.4, 2.5.1 and 1.1.2, and Rule 2.1.1; and

v. the Respondent will attend in person on the date set for the Settlement Hearing."

III. THE LAW

7. MFDA Rule 2.1.1 states, in part, as follows:

"2.1.1 **Standard of Conduct**. Each Member and each Approved Person of a Member shall:

a) deal fairly, honestly and in good faith with its clients;

b) observe high standards of ethics and conduct in the transaction of business;

c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; . . ."

8. This Rule prescribes the standard of conduct applicable to all registrants and is central to the MFDA's mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

9. MFDA Rule 2.1.4 requires that Approved Persons be aware of actual and potential conflicts of interest, and address such conflicts by the exercise of responsible business judgment influenced only by the best interests of the client.

10. By processing the transactions as redemptions and purchases, rather than as switches, and by failing to execute the trades in a timely manner, the Respondent exposed the clients to the risk of a change in value of the funds as the clients' assets were not invested while the trades settled. By processing the transactions for the clients in a manner that potentially benefitted himself and exposed the clients to unnecessary risk, the Respondent's conduct gave rise to a conflict of interest.

11. In *Gaunt* (*Re),* an MFDA Hearing Panel stated as follows:

> "A conflict of interest occurs when one party to a matter advances, uses or pursues his own interests in dealing with another person, to whom he has an obligation of dealing fairly, to the detriment of that other person or to his own advantage rather than the person to whom he owes the duty of fairness."
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> *Gaunt (Re)*, 2013 LNCMFDA 63 at para. 47.

12. In *Tonnies* (*R*e)*,* the Hearing Panel determined that the expression "reasonable business judgment" requires "the exercise of care and diligence in the circumstances to address the conflict or potential conflict of interest always being subject to being in the best interest of the client." As the Panel noted

> "The exercise of responsible business judgment may therefore vary depending on the nature of the conflict of interest. In cases involving a significant, actual conflict of interest, the exercise of responsible business judgment may require a blanket prohibition on, or refusal to proceed with, the proposed type of transaction giving

> rise to the conflict. In contrast, in cases involving a potential conflict of interest of a very speculative and relatively minor nature, the exercise of responsible business judgment may require only that the client is directed to obtain independent advice before proceeding with the proposed transaction."
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> *Tonnies (Re)*, 2005 LNCMFDA 7 at para. 26.

13. The Respondent clearly ought to have recognized the risk of loss from a possible change in the value of the funds while the trades settled and the clients' assets were not invested. This risk was obvious and significant. It required reimbursement to the clients.

14. MFDA Rule 2.5.1 requires Members to establish policies and procedures to ensure that the handling of the Member's business is in accordance with the MFDA By-laws, Rules and Policies, as well as with applicable securities legislation.

15. MFDA Rule 1.1.2 places a corresponding obligation on Approved Persons to do their part to facilitate compliance by the Member with the MFDA Rules, including compliance with the policies and procedures established and implemented by the Member.

16. As was stated by the MFDA Hearing Panel in *Frank* (*Re*):

> **"56** MFDA Rule 2.5.1 requires Members to establish, implement and maintain policies and procedures to ensure that the handling of its business is in accordance with MFDA By-laws, Rules and Policies and with applicable securities legislation.
>
> **57** Such policies and procedures are meaningless and cannot achieve their intended objectives if Approved Persons are not required to comply with them. MFDA Rule 1.1.2 is clear that Approved Persons share the responsibility of ensuring that obligations set out in the MFDA Rules are followed and must do their part to support the Member's obligations to be compliant with its regulatory obligations.
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> **58** In the context of policies and procedures of a Member, and especially policies designed to facilitate regulatory supervision by the Member, the failure of an Approved Person to comply with the Member's policies constitutes a regulatory violation."
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> ***Frank*** (*Re*), 2015 LNCMFDA 75 at paras. 56-58.

IV. PRINCIPLES REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS

17. In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

18. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

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;
vii. Whether the Settlement Agreement will foster confidence in the regulatory process itself.

Jacobson (Re), 2007 LNCMFDA 27.

19. Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. These include:

a) The seriousness of the allegations proved against the Respondent;
b) The Respondent's past conduct, including prior sanctions;
c) The Respondent's experience in the capital markets;
d) The level of the Respondent's activity in the capital markets;
e) Whether the Respondent recognizes the seriousness of the improper activity;
f) The harm suffered by investors as a result of the Respondent's activities;
g) The benefits received by the Respondent as a result of the improper activity;
h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
j) 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;
k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
l) Previous decisions made in similar circumstances.

Headley (Re), 2006 LNCMFDA 3 at para.85.

In the Matter of Robert Roy Parkinson (2005), Hearing Panel of the Ontario Regional Council, Decision and Reasons dated April 29, 2005, MFDA File No. 200501, at page 22.

V. CONSIDERATIONS IN THE PRESENT CASE

20. Staff made very detailed written and oral submissions as to how these principles applied to the case before us. These submissions included the following:

a) Seriousness of the Activity

21. We agree with the submissions of Staff that the Respondent engaged in serious misconduct. He breached the Rules of the MFDA, as well as his Member's policies and procedures. He failed to appropriately address the conflict of interest and exposed his clients to an unnecessary risk of loss.

b) The Respondent's Past Conduct including Prior Sanctions

22. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

c) The Respondent's Experience and Level of Activity in the Capital Markets

23. The Respondent was registered as a dealing representative from June of 2004 until he was terminated in June of 2018 in connection with the matters herein. From April 2013 to June 2018, he was also designated as an assistant branch compliance officer. Consequently, the Respondent ought to have known and respected the requirements of MFDA Rules 1.1.2, 2.1.1, 2.14 and 2.51.

d) The Respondent's Recognition of the Seriousness of the Misconduct

24. According to Staff, the Respondent co-operated fully with Staff's investigation and indicated an early desire to settle the matter. By entering into the Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full disciplinary hearing.

e) The Harm Suffered by Investors as a Result of the Respondent's Activities

25. The Respondent's misconduct resulted in client losses to a maximum of $3,100 per client and $13,000 in total. In or about February 2019, the Member reimbursed the clients for their losses.

f) Benefits Received by the Respondent as a Result of the Misconduct

26. Although the Respondent stated that he did not conduct the transactions he did in order to increase his compensation, he did acknowledge that had the transactions been conducted as switches, they would not have counted towards Member sales targets or awards that were available to him at the material time.

g) Deterrence

27. In our view, the proposed sanctions will serve as a notice to the Respondent specifically and the industry more generally that Approved Persons must uphold the required standard of conduct and avoid engaging in conflicts of interest. They will serve as a general caution and reminder to the public regarding potential outcomes for engaging in such misconduct.

h) The Respondent's Ability to Pay

28. The MFDA's new Sanction Guidelines ("Guidelines") came into effect on November 15, 2018. The Guidelines "are intended to promote consistency, fairness and transparency by providing a framework of applicable regulatory principles to guide the exercise of discretion in determining sanctions."

MFDA Sanction Guidelines, dated November 15, 2018.

29. The Guidelines are not mandatory. They make it clear that the "determination of the appropriate sanction in any given case is discretionary and a fact specific process."

30. With respect to the ability to pay, the Guidelines provide as follows:

> "11. *Ability to pay* – The Respondent's ability to pay may be a consideration in determining the appropriate monetary sanction to be imposed. However, it is only one of the factors to be weighed in relation to all other applicable factors including general and specific deterrence and the need to ensure public confidence in the MFDA's disciplinary processes.
>
> The burden is on the Respondent to raise the issue and to provide evidence of inability to pay, such as tax returns or audited financial statements. Evidence of a *bona fide* inability to pay may result in the reduction or waiver of a fine, or in the imposition of an installment payment plan. In cases in which Hearing Panels impose a lesser monetary sanction based on a *bona fide* inability to pay, the Reasons for Decision should so indicate."

31. In the case before us, the Respondent provided evidence to Staff that he has limited financial means, he is attempting to support his family, and currently earns just above the minimum wage. We took these factors into account when assessing the appropriateness of the level of the monetary sanctions.

i) Sanctions Imposed by Member

32. The Guidelines provide that: "A sanction imposed by the Member or another regulator against a Respondent for the same misconduct may be considered a mitigating factor."

33. As indicated in paragraph 6 of the Settlement Agreement (*supra*) and, as submitted by Staff, the Respondent's registration was terminated on June 22, 2018, as a result of the matters herein and he is not currently registered in the securities industry in any capacity. We took these facts into consideration when considering the appropriateness of the proposed sanctions.

j) Previous Decisions in Similar Cases

34. Staff provided the Hearing Panel with a detailed chart seeking to show that the proposed resolution was within the reasonable range of appropriateness with regard to other decisions made by MFDA Hearing Panels in similar circumstances. Although Staff could only point to one MFDA matter in which an Approved Person was sanctioned for a conflict of interest arising from seeking to contribute to a sales target, it referred to a number of other cases with similar features. In both her written and oral presentations, Staff Counsel compared each of the cases in detail to the present case, outlining the similarities as well as the disparities.

35. The following cases were discussed:

a) *Guo* (*Re*), MFDA File No. 201949, Reasons for Decision of the MFDA Central Regional Council dated April 2, 2020.

b) *Jaswal* (*Re*), MFDA File No. 201967, Settlement Agreement dated May 11, 2020 and Order of the MFDA Pacific Regional Council dated May 13, 2020 (Reasons not yet issued).

c) *Rana* (*Re*), 2019 LNCMFDA 34, Reasons for Decision of the MFDA Central Regional Council dated March 19, 2019.

d) *Singh* (*Re*), MFDA File No. 201847, Reasons for Decision of the MFDA Central Regional Council dated January 23, 2019.

e) *Sawwaf* (*Re*), 2019 LNCMFDA 13, Reasons for Decision of the Central Regional Council dated January 17, 2019.

f) *Cummins* (*Re*), 2017 LNCMFDA 139, Reasons for Decision of the Central Regional Council dated June 8, 2017.

VI. DECISION

36. After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

VII. ORDER

37. After accepting the Settlement Agreement, we made the following Order:

a) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;

b) The Respondent shall be prohibited for a period of two years from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member commencing from the date of the final Order herein, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

c) The Respondent shall pay a fine in the amount of $2,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

d) The Respondent shall pay costs in the amount of $2,500 pursuant to s. 24.2 of MFDA By-law No. 1; and

e) The Respondent shall in the future comply with MFDA Rules 2.1.4, 2.5.1 and 1.1.2, and Rule 2.1.1.

DATED this 2nd day of October, 2020.

"Thomas J. Lockwood"
Thomas J. Lockwood, QC
Chair

"Edward Jackson"
Edward Jackson
Industry Representative

"Katherine Samayoa"
Katherine Samayoa
Industry Representative

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