



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: Iftikhar Mahmood

Heard: March 26, 2015 in Toronto, Ontario
Reasons for Decision: April 9, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney	Chair
Robert Christianson	Industry Representative
Michael Elliott	Industry Representative

Appearances:

David Halasz)	For the Mutual Fund Dealers Association of
)	Canada
)	
Iftikhar Mahmood)	In Person
)	
)	

BACKGROUND

1. We were constituted as a Hearing Panel of the Central Regional Council of the MFDA to consider a Settlement Agreement dated March 16, 2015¹ between the MFDA and the Respondent, Iftikhar Mahmood, (the “Respondent”), which had been published but not within the 10 days notice required by the MFDA Rules.

2. The parties brought a joint motion for an order abridging the time requirement of the MFDA. The Hearing Panel made the order as requested.²

3. The Hearing Panel ordered that the proceedings be moved *in camera*.³

4. The Hearing Panel then considered the Settlement Agreement and heard submissions from Counsel on why the Settlement Agreement was reasonable and appropriate. The Hearing Panel retired to consider whether or not to accept the Settlement Agreement. The Hearing Panel accepted the Settlement Agreement and signed an Order dated March 26, 2015 which provides, in summary:

- a) that the Respondent pay a fine of \$5,000, payable in two instalments on May 15, 2015 and June 15, 2015; and
- b) costs of \$2,500.

5. The Chair said that brief reasons for the Hearing Panel’s decision would follow. These are those reasons.

CONTRAVENTIONS

6. The Respondent admits that between June 2010 and October 2010, he referred one client to a company that sold mortgage investment products and received \$750 in referral fees for

¹ Exhibit 3

² MFDA Rules of Procedure 1.3, 1.5 and 2.2

³ MFDA Rules of Procedure 15.2.2

doing so, thereby participating in a referral arrangement to which the Member was not a party and which did not otherwise comply with sections 13.7 and 13.8 of National Instrument 31-103.

THE MATERIAL FACTS

7. Since January 18, 2013, the Respondent has been registered in Ontario as a dealing representative with Equity Associates Inc. (“Equity”).

8. From June 18, 2008 to December 21, 2012, the Respondent was registered in Ontario as a mutual fund salesperson with FundEX Investments Inc. (“FundEX”).

9. Waterview Capital Corp. (“Waterview”) was an exempt market dealer whose registration, as well as its principal’s, was suspended by the Ontario Securities Commission (“OSC”) on April 25, 2011 following a compliance examination by OSC Staff which identified numerous violations, including that Waterview did not maintain know-your-client forms for some investors, traded without registration while suspended, and sold investments to a non-accredited investor.

10. Prior to its suspension, Waterview sold investments that included interests in mortgages on certain properties.

11. While registered with FundEX, the Respondent met with a Waterview representative in the summer of 2010, at which time the representative of Waterview advised the Respondent that:

- a) Waterview was offering a real estate financing product;
- b) Investors would receive 10% interest on monies invested with Waterview;
- c) Waterview would pay a commission on referrals; and
- d) FundEX was in the process of approving the investment in Waterview.

12. After meeting with the Waterview representative, the Respondent did not inquire of FundEX whether it was in the process of approving the Waterview investment.

13. A few weeks after meeting with the Waterview representative during the summer of 2010, the Respondent met with client HF, who was interested in investing \$20,000 for one year, and sought advice from the Respondent about where to invest her moneys.

14. The Respondent states that he advised client HF that investing in mutual funds was too risky given her one-year time frame, and that she might benefit instead from investing in the Waterview product. The Respondent provided client HF with the contact information for the representative of Waterview.

15. Client HF subsequently invested in Waterview.

16. In or about September 2010, a Waterview representative contacted the Respondent and asked him where he would like the referral fee of \$750 to be paid. The Respondent then inquired of the Waterview representative whether FundEX had approved the investment, and the Respondent states that the Waterview representative told him that FundEX had not, and likely would not, approve the investment.

17. The Respondent states that he told the Waterview representative something along the lines of, "I'm probably not supposed to receive [the referral fee], but if you're sending me the cheque, can you make it payable to my wife?"

18. The Respondent requested that Waterview issue the cheque in the name of his wife in order to "mitigate any breach ... that may have occurred" after the Waterview representative had told him that FundEX had not approved the Waterview investment.

19. Waterview was not an investment approved by FundEX for sale by its Approved Persons, including the Respondent. The transactions involving Waterview were not processed for the account or through the facilities of FundEX.

20. Prior to referring client HF to invest in Waterview, the Respondent did not disclose to FundEX that he was making such a referral. FundEX did not have a referral agreement with Waterview.

21. In July 2012, the Respondent attended a FundEX compliance conference during which he voluntarily disclosed to FundEX's compliance officer that he had referred a client to Waterview.

22. On September 24, 2012, FundEX issued a letter of reprimand to the Respondent due to the undisclosed referral arrangement and commission payment from Waterview. FundEX advised the Respondent that it was placing him under strict supervision, and would be deducting a percentage of his commission.

23. The Respondent resigned from FundEX in December 2012 and, at that point, FundEX had deducted \$1,500 from commission payments owed to the Respondent, plus a \$500 fee for mailing statements to clients. In January 2013, the Respondent became registered as a dealing representative with Equity.

24. During the material time, FundEX had written policies and procedures that prohibited its Approved Persons from, among other things, entering into a referral arrangement directly with another person or entity.

SUBMISSIONS OF COUNSEL

25. Counsel referred to National Instrument 31-103 which prohibits a registrant from participating in a referral arrangement except in certain limited conditions. He said these provisions allow a Member properly to control, monitor and train its Approved Persons.

26. Counsel urged the Hearing Panel to accept the Settlement Agreement in the public interest. He stressed, in particular, the importance of deterrence and disgorgement of any earnings by an Approved Person from his misconduct.

ANALYSIS

27. The Hearing Panel is well aware of the fact that it may either only accept or reject the Settlement Agreement.

28. It is also aware that it should not interfere in a negotiated settlement so long as the penalties are within a reasonable range of appropriateness having regard to the conduct of the Respondent.

29. The members of the Hearing Panel are surprised that the Respondent would risk his registration for such a small amount of money. He did, however, breach sections 13.7 and 13.8 of National Instrument 31-103 and for that he must be punished to deter him and others who might engage in such behaviour. The proposed fine of \$5,000 is appropriate given that it means the Respondent will disgorge far more money than he earned from his misconduct. Significantly, the penalty proposed in this case is consistent with that imposed in a recent decision of another hearing panel based on similar facts.⁴

30. The Hearing Panel considered the following mitigating factors:

- a) The Respondent has not previously been the subject of MFDA disciplinary proceedings.
- b) The Respondent has cooperated with Staff during its investigation. Moreover, by agreeing to the Settlement Agreement he has saved the necessity of a hearing with its attendant costs.
- c) The Respondent has already paid the \$2,500 in costs.
- d) There were no complaints against the Respondent or any evidence of investor loss.

⁴ *Rajpal (Re)*, [2015] Hearing Panel of the Central Regional Council, File No. 201362, Hearing Panel Decision dated March 19, 2015.

DECISION

31. The Hearing Panel unanimously approves the Settlement Agreement for the reasons above.

DATED this 9th day of April, 2015.

“Terrance A. Sweeney”

Terrance A. Sweeney
Chair

“Robert Christianson”

Robert Christianson
Industry Representative

“Michael Elliott”

Michael Elliott
Industry Representative

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