



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: Evangelos-Angelos Mantzios

Heard: November 29, 2019 in Toronto, Ontario

Decision: November 29, 2019

Reasons for Decision: May 13, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, QC
Rob Christianson
Melody Potter

Chair
Industry Representative
Industry Representative

Appearances:

Francis Roy)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
William Rapaport)	Counsel for the Respondent
)	
)	
Evangelos-Angelos Mantzios)	Respondent, in person
)	
)	

I. INTRODUCTION

1. By Notice of Settlement Hearing, dated October 7, 2019, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened, on November 29, 2019, in Toronto, Ontario, to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, it should accept a Settlement Agreement entered into between Staff of the MFDA and Evangelos-Angelos Mantzios (“Respondent”) on October 7, 2019.

2. In the Settlement Agreement, the Respondent admitted that between October 2016 and August 22, 2017, he implemented leveraged investments in the mutual fund accounts of at least 4 clients without having achieved the necessary leveraging proficiency requirements mandated by the Member, contrary to the Member’s policies and procedures and MFDA Rules 2.5.1, 1.1.2 and 2.1.1.

3. At the commencement of the Settlement Hearing, on November 29, 2019, 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 November 29, 2019. 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:

“II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No.1.

IV. AGREED FACTS

Registration History

6. From June 26, 2009 to August 22, 2017, the Respondent was registered in Ontario as a mutual fund salesperson (now known as dealing representative¹) with Sun Life Investment Services (Canada) Inc. (the “Member”), a Member of the MFDA. He was also registered in Alberta as a mutual fund salesperson with the Member from June 26, 2009 to October 31, 2012.

7. Prior to that, the Respondent was registered in Ontario as a mutual fund salesperson with WFG Securities Inc. from February 3, 2009 to May 26, 2009.

8. The Respondent is no longer registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in Mississauga, Ontario.

Contravention

10. On March 14, 2016, the Member revised and amended its policy and procedure concerning leveraged investments (the “leveraging policy”) to prohibit its Approved Persons from “opening any new leveraged accounts” and processing “new purchases of leveraged assets into an existing account” (the “leveraging moratorium”). Despite the leveraging moratorium, the leveraging policy allowed the Member’s Approved Persons to continue servicing clients’ leveraged investments made prior to the leveraging moratorium.

11. The Member exempted its Approved Persons from its leveraging moratorium and allowed them to make new leveraging recommendations if Approved Persons, among other things:

- a) read a document prepared by the Member titled “Individual Wealth Management – A Guide to Leveraged Investing”; and
- b) completed a training module and passed a test on the Member’s:
 - i. leveraging policy; and
 - ii. document titled “Individual Wealth Management – A Guide to Leveraged Investing”; (the “leveraging proficiency requirements”).

¹ On September 28, 2009, as a result of the implementation of National Instrument 31-103, the mutual fund salesperson registration category was changed to “dealing representative – mutual fund dealer”.

12. On or about March 16, 2016, the Member issued a bulletin to its Approved Persons titled “Protecting client interests: mandatory new mutual fund policies effective March 14.” The bulletin stated, in part:

Effective immediately, advisors will not be able to open new leveraged accounts until further notice [and until] the issues within our existing block have been addressed.

...

In order to do leveraging [Approved Persons] will be subject to greater supervision and oversight than before [and] must receive advance approval and complete a proficiency test. When all of the issues ... have been sufficiently addressed, a qualified [Approved Person] will be able to open a new leveraged account.

13. At no time, either before or after the Member’s leveraging policy was revised and amended on March 14, 2016, did the Respondent have or otherwise meet the Member’s leveraging proficiency requirements. The Member, having decided not to allow its Approved Persons to process new leveraged investment trades for clients, did not make available for completion by its Approved Persons the training module described at paragraph 11(b) above. The Respondent states that he completed the requirement described at paragraph 11(a) above.

14. In August 2017, the Member conducted a review of all client account files maintained and serviced by the Respondent (the “August 2017 review”). In doing so, the Member discovered 4 client accounts wherein, after the Member’s leveraging moratorium came into effect, the Respondent had caused to be implemented leveraged investments which the Respondent failed to disclose to the Member (the “post-leveraging moratorium investments”).

15. In all 4 instances of post-leveraging moratorium investments, the Respondent:

- a) accepted funds from clients that he knew were from new or existing home equity lines of credit (“HELOCs”); and
- b) made investment recommendations to the clients knowing that the monies borrowed by the clients would be used to give effect to the his (sic) recommendations.

16. Although he made the investment recommendations knowing the clients had borrowed from their HELOCs to make such investments, the Respondent did not disclose to the Member that the source of the client funds were borrowed monies. As a result, the Respondent acted contrary to the Member’s leveraging policy and leveraging moratorium and prevented the Member from adequately and properly discharging its supervisory obligations.

Additional Factors

17. The Respondent has no prior disciplinary history.

18. In part, as a result of the facts described above, the Respondent’s registration was terminated by the Member on August 22, 2017. He has not been registered in the mutual fund industry since that time.

19. None of the four clients described in paragraphs 14-16 above submitted complaints about the Respondent to the MFDA or the Member.

20. The Respondent has cooperated with Staff during its investigation and during this disciplinary proceeding.

21. By entering into this Settlement Agreement, the Respondent has expressed remorse for his actions and avoided the need for a prolonged hearing on the merits.

V. CONTRAVENTION

22. The Respondent admits that between October 2016 and August 22, 2017, he implemented leveraged investments in the mutual fund accounts of at least 4 clients without having achieved the necessary leveraging proficiency requirements mandated by the Member, contrary to the Member's policies and procedures and MFDA Rules 2.5.1, 1.1.2 and 2.1.1.

VI. TERMS OF SETTLEMENT

23. Upon acceptance of this Settlement Agreement, the Respondent agrees to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$5,000 pursuant to section 24.1.1(b) of MFDA By-law No. 1, upon the acceptance of this Settlement Agreement; and
- b) the Respondent shall pay the costs of this proceeding and investigation in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1, upon the acceptance of this Settlement Agreement.

VII. STAFF COMMITMENT

24. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.”

III. THE LAW

7. MFDA Rule 1.1.2 requires each Approved Person who participates in any securities related business in respect of a Member to comply with the By-laws and Rules as they relate to the Member or the Approved Person.

8. MFDA Rule 2.5.1 makes each Member responsible for establishing, implementing and maintaining policies and procedures to ensure that the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

9. As outlined in paragraphs 10-12 of the Settlement Agreement, in March of 2016 the Member revised and amended its policy and procedure concerning leveraged investments to prohibit its Approved Persons from opening any new leveraged accounts and processing new purchases of leveraged assets into existing accounts unless the Approved Person complied with certain specific leveraging proficiency requirements.

10. In the Settlement Agreement, the Respondent admitted that at no time, either before or after the Member's leveraging policy was revised and amended, did he have or otherwise meet the leveraging proficiency requirements. He further admitted that he implemented leveraged investments in the mutual fund accounts of at least 4 clients after the new policy was in effect and conceded that he acted contrary to the Member's policies and procedures and MFDA Rules 2.5.1, 1.1.2 and 2.1.1.

11. In the matter of *Franco (Re)*, the Hearing Panel stated that “[t]he obligation of Approved Persons to comply with the policies and procedures of the Members that they are registered with is a cornerstone of the self-regulatory system. MFDA Members are expected to be aware of their regulatory obligations and to implement policies and procedures to ensure compliance. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined.”

Franco (Re) MFDA File No. 201016, Hearing Panel of the Prairie Regional Council, Decision and Reasons, dated May 6, 2011, at para. 38.

12. Other MFDA Hearing Panels have similarly held that an Approved Person's failure to comply with a Member's compliance directive, or its policies and procedures, is conduct which is contrary to MFDA Rules 2.5.1, 1.1.2 and 2.1.1.

Irwin (Re), MFDA File No. 200915, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 28, 2010.

Boldt (Re), MFDA File No. 201649, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated February 6, 2017 at paras. 6-7.

Re Donald Wayne O'Connor, [2018] MFDA File No. 201756, Hearing Panel of the Prairie Regional Council, Reasons for Decision dated October 31, 2018 (“*O'Connor*”) at para. 141.

Cassim (Re), MFDA File No. 201804, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 24, 2019.

Thackray (Re), MFDA File No. 201736, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated May 24, 2017.

IV. PRINCIPLES REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS

13. Prior to accepting a Settlement Agreement, the Hearing Panel must be satisfied that the facts admitted to by the Respondent constitute misconduct in contravention of MFDA By-laws or Rules and that the penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness bearing in mind the nature and extent of the misconduct and all of the circumstances.

14. 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.

15. 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.

Re: *Investors Group Financial Services (Re)*, [2005] MFDA Ontario Regional Council, File No. 200401, Hearing Panel Decision dated December 16, 2004 at pages 2-3.

Re: *Professional Investments (Kingston) Inc. (Re)*, [2009] Central Regional Council, File No. 200836, Hearing Panel Decision dated March 24, 2009, page 9, para. 14.

16. 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.

Re: 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.

*Re: In the Matter of Arnold Tonnie*s [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Hearing Panel Decision dated June 27, 2005 at p. 23.

V. CONSIDERATIONS IN THE PRESENT CASE

(i) Seriousness of the Contraventions

17. We agree with the submission of Staff that the contravention in question is serious. As indicated above, it is a cornerstone of the self-regulatory system that Approved Persons must comply with the policies and procedures of the Member. Failure to do so can strain the Member's supervisory resources and engender investor harm.

(ii) Respondent's Past Conduct, Experiences and Disciplinary History

18. At the time his misconduct was discovered, the Respondent was an experienced registrant with no previous disciplinary history. As a result of the facts described above, the Respondent's registration was terminated by the Member on August 22, 2017. He has not been registered in the mutual fund industry since that time.

(iii) Remorse

19. The Respondent has demonstrated remorse and has accepted responsibility for his conduct. He co-operated with Staff both during the investigation and the disciplinary proceedings.

(iv) Client Harm

20. Staff did not present any evidence to the Hearing Panel that the 4 clients who made leveraged investments through the Respondent after the Member's leveraging proficiency requirements came into effect suffered harm or investment losses as a result of the Respondent's misconduct.

(v) Deterrence

21. In our view, the total of the proposed financial penalties of \$7,500.00, combined with the fact that the Respondent was terminated by the Member and has not been registered in the industry since August of 2017, will act as a specific deterrent to the Respondent should he seek to re-enter the securities industry in the future. We have also considered the nature of these proceedings, the fact that they are public and the effect that this has had and will have on the Respondent. We also agree with Staff's submission that the proposed penalty will act to deter others in the capital markets from engaging in similar activity.

(vi) Public Interest and Proportionality

22. We have also considered that this was a Settlement Agreement reached after significant discussions and negotiation between Staff and the Respondent. It represents what the parties, with their knowledge and experience, feel is an appropriate resolution. The Settlement Agreement clearly conveys that the Respondent's conduct is serious and meritorious of significant, though proportional, penalties, after a due consideration of the total circumstances of the case.

(vii) Integrity of the Capital Markets and the Regulatory Process

23. The Hearing Panel also agrees with the submission of Staff that by transparently revealing the nature and extent of the Respondent's misconduct and imposing the proposed penalties, the Settlement Agreement, along with this Hearing process, will foster increased confidence in the integrity of the capital markets and the regulatory process itself.

(viii) Previous Decisions Made in Similar Cases

24. Staff provided the Hearing Panel with a chart which showed that the proposed penalties are consistent with the penalties imposed by MFDA Hearing Panels in previous cases, in similar circumstances. The following examples were provided:

(a) *Thackray, supra.*

(b) *Botha (Re)*, [2019] MFDA File No. 201736, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated July 10, 2019.

(c) *Doiron (Re)*, [2019] MFDA Hearing No. 201722, Hearing Panel of the Central Regional Council, Decision dated February 6, 2019.

VI. DECISION

25. 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

26. 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 pay a fine in the amount of \$5,000.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
- c) The Respondent shall pay costs of this proceeding in the amount of \$2,500.00, pursuant to section 24.2 of MFDA By-law No. 1.

DATED this 13th day of May, 2020.

“Thomas J. Lockwood”

Thomas J. Lockwood, QC
Chair

“Rob Christianson”

Rob Christianson
Industry Representative

“Melody Potter”

Melody Potter
Industry Representative