



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: Hugh Bruce McDougall

Heard: July 26, 2018 in Toronto, Ontario
Decision: July 26, 2018
Reasons for Decision: September 4, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC
Guenther W. K. Kleberg
Edward V. Jackson

Chair
Industry Representative
Industry Representative

Appearances:

Alan Melamud)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Theresa Hartley)	Counsel for the Respondent
)	
)	
Hugh Bruce McDougall)	Respondent, in person
)	
)	

Background

1. The Hearing Panel accepted the settlement agreement dated May 8, 2018 (“Settlement Agreement”) between the staff of the MFDA and Hugh Bruce McDougall (“Respondent”). A copy of the Settlement Agreement is attached to these Reasons as Appendix “A”. The agreed facts are set out in Section IV of the Settlement Agreement.

Contraventions

2. The Respondent admitted that on December 5, 2016, he requested a loan of \$300,000 from client KF, thereby giving rise to a conflict of interest or a potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the policies and procedures of the Member, and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.

Agreed penalties

3. The agreed penalties were: i) a fine of \$5,000; and ii) a costs award of \$2,500.

4. In addition, the Member imposed a fine of \$30,000 on the Respondent and placed him under strict supervision until further notice.

Considerations

5. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be

satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the agreed penalty.

Nature of the Misconduct

6. Attempting to borrow funds from a client as admitted by the Respondent is a contravention of the referenced MFDA Rules.

Other considerations in determining acceptability of agreed penalties

7. The client ultimately suffered no harm, as the Respondent never obtained the loan.

8. The Respondent intended to properly document the loan, thereby demonstrating an intention to maintain a transparent record of the proposed loan.

9. The Respondent has not previously been subject to MFDA disciplinary proceedings.

10. The Respondent recognized the seriousness of his misconduct. By entering into the Settlement Agreement, the Respondent has accepted responsibility for the misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

11. The Respondent is in the course of paying a fine of \$30,000 to his Member as a penalty imposed by the Member and is under strict supervision until further notice.

12. The agreed penalties are within the recommendations of the MFDA penalty guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

Costs

13. The costs award is reasonable.

Conclusion

14. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 4th day of September, 2018.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Edward V. Jackson”

Edward V. Jackson
Industry Representative

DM 631386



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Re: Hugh Bruce McDougall

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Hugh Bruce McDougall.

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.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part XI) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. The Respondent has been registered as a mutual fund salesperson since 1994.

7. On June 23, 2009, the Respondent became registered as a mutual fund salesperson in the provinces of Ontario, Nova Scotia and British Columbia with Manulife Securities Investment Services Inc. (the “Member”), a Member of the MFDA. Since December 16, 2013, the Respondent has been designated as a branch manager.

8. At all material times, the Respondent operated in and around Burlington, Ontario.

The Respondent Requested a Loan from a Client

9. At all material times, the Member maintained policies and procedures which prohibited its Approved Persons, including the Respondent, from borrowing monies or assets from clients.
10. KF was a client of the Member. The Respondent was the mutual fund salesperson responsible for servicing the accounts of client KF.
11. On December 5, 2016, client KF with met with the Respondent at his office.
12. During the meeting, the Respondent requested a personal loan in the amount of \$300,000 from client KF. The Respondent advised client KF that he owed approximately \$300,000 to the Canada Revenue Agency (“CRA”) as a result of incorrectly filing his business taxes for the years 2011 to 2013.
13. The Respondent requested that client KF loan him \$300,000 for a five year term which the Respondent would repay in monthly installments of \$5,000 and four annual installments of \$10,000. The Respondent proposed to pay client KF interest calculated at a rate of six percent per year.
14. The Respondent advised client KF that the loan could be formalized with legal documentation.
15. Client KF advised the Respondent that she would discuss the request with her spouse.
16. Shortly after her meeting with the Respondent, client KF made arrangements to move her accounts from the Member to another institution. Client KF also contacted her friend, CB, who is a registrant with the Investment Industry Organization of Canada to discuss the Respondent’s request to borrow monies from her.

17. On December 12, 2016, CB contacted the Member and reported that the Respondent had sought a personal loan in the amount of \$300,000 from client KF.

18. On December 13, 2016, the Member interviewed client KF who confirmed that the Respondent had requested a personal loan in the amount of \$300,000.

19. On December 19, 2016, the Member interviewed the Respondent. The Respondent admitted to requesting a loan in the amount of \$300,000 from client KF in order to repay the CRA and acknowledged that his request for a personal loan from client KF was inappropriate.

20. On or about February 17, 2017, the Respondent repaid the CRA by liquidating his own investments.

The Member Disciplined the Respondent

21. In October 2017, the Member imposed a fine in the amount of \$30,000 (which monies will be directed to a charity) on the Respondent and is currently collecting the funds through garnishment of his wages which began in November 2017. Payment of the fine imposed by the Member is expected to be completed within 18 months.

22. The Member has also placed the Respondent under strict supervision until further notice and reminded the Respondent to refrain from any personal financial dealings with clients.

23. Prior to the events described in the Settlement Agreement, the Respondent had never previously been disciplined by the MFDA.

V. CONTRAVENTIONS

24. The Respondent admits that on December 5, 2016, he requested a loan in the amount of approximately \$300,000 from client KF, thereby giving rise to a conflict of interest or a potential conflict of interest which he failed to address by the exercise of responsible business judgment

influenced only by the best interests of the client, contrary to the policies and procedures of the Member, and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine in the amount of \$5,000;
- b) the Respondent shall pay costs in the amount of \$2,500;
- c) the Respondent will attend in person, on the date set for the Settlement Hearing;
and
- d) the Respondent shall in the future comply with all applicable MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations that the Respondent has agreed he breached in relation to this Settlement Agreement.

VII. STAFF COMMITMENT

26. 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 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 V and VI 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 V and VI, 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.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

27. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

28. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

29. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.1 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

30. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

31. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the

Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

32. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

33. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

34. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

35. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

36. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

37. A facsimile copy of any signature shall be effective as an original signature.

DATED this 8th day of May, 2018.

“Hugh Bruce McDougall”
Hugh Bruce McDougall

“BM”
Witness – Signature

BM
Witness – Print Name

“Shaun Devlin”
Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement



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Re: Hugh Bruce McDougall

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Hugh Bruce McDougall (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date], 2018 (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that, on December 5, 2016, the requested a loan in the amount of approximately \$300,000 from client KF, thereby giving rise to a conflict of interest or a potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the policies and procedures of the Member, and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall pay a fine in the amount of \$5,000;
2. The Respondent shall pay costs in the amount of \$2,500;
3. The Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4, 2.5.1 and 1.1.2 that the Respondent has agreed he breached in relation to this Settlement Agreement; and
4. 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*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]