



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: Gabrijela Mihajlovic

Heard: November 30, 2017 in Toronto, Ontario

Decision: November 30, 2017

Reasons for Decision: December 8, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC

Chair

Brigitte J. Geisler

Industry Representative

Guenther W. K. Kleberg

Industry Representative

Appearances:

Michelle Pong

)

Counsel for the Mutual Fund Dealers

)

Association of Canada

)

Gabrijela Mihajlovic

)

Respondent, in person

)

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated August 30, 2017 (“Settlement Agreement”) between the staff of the MFDA and Gabrijela Mihajlovic (“Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in section III of the agreement.

Contraventions

2. The Respondent admitted that:
- a) on or about August 23, 2014, she borrowed \$5,000 from a client, thereby engaging in conduct giving rise to a conflict or potential conflict of interest which she 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 2.1.1, 2.1.4, 2.5.1 and 1.1.2.

Agreed penalties

3. The agreed penalties were: i) a one year prohibition from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA; and ii) a fine of \$5,000 payable in instalments.

Considerations

4. 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 her of the agreed penalty.

Issues which concerned the panel

5. The panel agreed with staff that the contravention admitted to by the Respondent was serious. This raised doubts in the panel's mind about the sufficiency of the agreed penalty.

6. The panel believed that based solely on what was disclosed in the agreed facts, the agreed penalty was below an acceptable range based on precedent cases provided by staff, and was less than the minimum fine of \$10,000 suggested by the MFDA Penalty Guidelines with respect to conflicts of interest.

7. The panel was concerned whether the client who was still owed \$3,642 in respect of the loan as of November 2016, had since been fully repaid.

8. The panel wondered why there were no costs awarded against the Respondent in the typical amount of \$2,500 for a case like this.

9. The panel required further information before it could be satisfied as to the three considerations outlined in paragraph 4 of these reasons.

Additional information

10. With the agreement of the Respondent, staff disclosed to us confidential financial information and the personal circumstances of the Respondent which satisfied us that the agreed penalty would have a significant impact on the Respondent. We were satisfied that under the difficult financial and personal circumstances of the Respondent the agreed penalty would act as

an adequate specific deterrent for her and, accordingly, as a general deterrent for anyone else in the industry in similar circumstances.

11. We were advised that the Respondent's Member had fully repaid what was owing to the Respondent's client and that the Respondent had not reimbursed the Member for such repayment.

12. Staff submitted that a costs award against the Respondent was not mandatory and that staff considered the total dollar amount of the fine, without attributing a part to costs, to be sufficient in the circumstances. We agreed with staff's submission.

13. In light of the additional information provided to the panel, we concluded that the agreed penalty was fair and reasonable.

Other factors considered

14. After the Member's repayment, there was no evidence of client loss.

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

16. The Respondent is no longer registered in the securities business in any capacity.

17. Staff advised that the Respondent was fully co-operative with the MFDA.

18. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

Conclusion

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

DATED this 8th day of December, 2017.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Brigitte J. Geisler”

Brigitte J. Geisler
Industry Representative

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

DM 587443

Schedule “1” Settlement Agreement

File No. 201783



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Gabrijela Mihajlovic

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Gabrijela Mihajlovic (“Respondent”), consent and agree to settlement of this matter by way of this agreement (“Settlement Agreement”).

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

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) On or about August 22, 2014, the Respondent borrowed \$5,000 from a client, thereby engaging in conduct giving rise to a conflict or potential conflict of interest which the Respondent 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 2.1.1, 2.1.4, 2.5.1 and 1.1.2.

5. Staff and the Respondent agree and consent to the following terms of settlement:

- a) The Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member shall be prohibited for a period of one year from the date of the order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) 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, payable as follows:
 - i. \$1,700 payable on or before the date of the settlement hearing;
 - ii. \$1,700 payable no later than 2 months from the date that the Settlement Agreement is accepted by the Hearing Panel;
 - iii. \$1,600 payable no later than 4 months from the date that the Settlement Agreement is accepted by the Hearing Panel;
- c) The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.1.1, 2.1.4, 2.5.1 and 1.1.2; and
- d) The Respondent will attend in person, on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule "A".

III. AGREED FACTS

Registration History

7. Between June 20, 2002 and July 14, 2015, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Scotia Securities Inc. (“Scotia”), a Member of the MFDA. The Respondent was terminated by the Member on July 14, 2015 due to the matters described herein.

8. The Respondent is not currently registered in the securities industry in any capacity.

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

Personal Financial Dealings with a Client

10. At all material times, client KA was a client of Scotia whose accounts were serviced by the Respondent.

11. At all material times, Scotia maintained policies and procedures which stated:

Any personal financial dealings, arrangements, or sharing of interest in a customer’s account other than as an [Mutual Fund Representative], is strictly prohibited. Prohibited activities include:

- Entering a personal borrowing or lending arrangement with customers
- Using customer’s money for your personal investments
- Making personal settlements with customers as a result of a complaint (complaint resolutions may only be undertaken by the Compliance Department)
- Issuing personal cheques to customers for fees, paying losses or other reimbursements...

12. On or about February 11, 2014, the Respondent completed Scotia's MFR Annual Certification Check-Off and MFR Annual Certification Course. The Respondent acknowledged and certified, among other things, that she had read and understood Scotia's policies and all other Scotia business related News Items that have been issued; and conducted business on behalf of Scotia, in compliance with Scotia policies.

13. On or about August 22, 2014, the Respondent borrowed \$5,000 from client KA.

14. In order to repay the loan to client KA, on or about August 22, 2014, the Respondent set up an automatic biweekly transfer of \$194 from the Respondent's bank account to client KA's bank account, such that the loan would be repaid by September 4, 2015.

15. In January 2015, the Respondent ceased making payments to client KA to repay the loan.

16. In November 2016, the Respondent owed client KA at least \$3,642 in respect of the loan the Respondent obtained from client KA.

17. The Respondent states that she has attempted to contact the client to resume repayments to the client but the client has not responded to the Respondent's attempts

IV. ADDITIONAL TERMS OF SETTLEMENT

18. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

19. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the "Settlement Hearing"). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. 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.

20. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

21. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent waives any 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;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.2 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA By-law No. 1; and
- e) 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 the Respondent.

22. If, for any reason, this Settlement Agreement is not accepted 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 MFDA By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

23. Staff and the Respondent agree that the terms of the 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.

24. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

DATED this 30th day of August, 2017.

“Gabrijela Mihajlovic”

Gabrijela Mihajlovic

“VP”

Witness – Signature

VP

Witness – Print Name

“Shaun Devlin”

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

Schedule “A”

Order

File No. 201783



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Re: Gabrijela Mihajlovic

ORDER

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

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

AND WHEREAS the Hearing Panel is of the opinion that on or about August 22, 2014, the Respondent borrowed \$5,000 from a client, thereby engaging in conduct giving rise to a conflict or potential conflict of interest which the Respondent 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 2.1.1, 2.1.4, 2.5.1 and 1.1.2.

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

1. The Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member shall be prohibited for a period of one year from the date of the order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
2. 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, payable as follows:
 - i. \$1,700 payable on or before the date of the settlement hearing;
 - ii. \$1,700 payable no later than 2 months from the date that the Settlement Agreement is accepted by the Hearing Panel;
 - iii. \$1,600 payable no later than 4 months from the date that the Settlement Agreement is accepted by the Hearing Panel;
3. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.1.1, 2.1.4, 2.5.1 and 1.1.2; 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]