



**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: John Joseph Moakler**

Heard: May 17, 2016 in Toronto, Ontario  
Reasons for Decision: May 24, 2016

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Greg Juby	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Shelly Feld	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
	)	
	)	
Ellen Bessner	)	Counsel for the Respondent
	)	

## **Background**

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on May 17, 2016. The full Settlement Agreement, dated February 25, 2016, entered into between Staff of the MFDA and John Moakler (“Mr. Moakler” or the “Respondent”) is available on the MFDA website and will not be set out in detail here. Mr. Moakler, who appeared at the Settlement Hearing, was represented by counsel.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the May 17, 2016, hearing, with reasons to follow. These are our reasons for the decision.

3. From July 12, 2004 until October 30, 2013 when he voluntarily resigned, the Respondent was registered in Ontario, Alberta and Quebec as a mutual fund salesperson or dealing representative with Investors Group Financial Services Inc. (“Investors Group” or the “Member”), a member of the MFDA.

4. The Respondent intended to become registered as a dealing representative with a member of the Investment Industry Regulatory Organization of Canada (“IIROC”) following the termination of his registration with Investors Group, but he has not been registered in the securities industry in Canada since October 30, 2013 as a consequence of the conduct addressed in this proceeding.

5. Prior to his resignation in October 2013, the Respondent serviced the accounts of more than 300 clients of Investors Group at the Member’s Brampton South Office and was responsible for assets under administration of more than \$60 million.

## **Alleged Conduct**

6. Subsequent to the Respondent leaving Investors Group, Staff of the MFDA 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 a Hearing Panel pursuant to s. 24.1 of By-law No. 1.

7. Proceedings against the Respondent were commenced by a Notice of Settlement Hearing, dated January 18, 2016.

8. In the Settlement Agreement (paras. 21 and 22) the respondent admits contraventions of MFDA rules.

9. Paragraph 21 of the Settlement Agreement states:

“The Respondent admits that between September and October 2013, he processed trades in the accounts of 17 clients of Investors Group without the knowledge, authorization or approval of the clients and thereby engaged in unauthorized discretionary trading, contrary to MFDA Rules 2.3.1(a) and 2.1.1 and acted outside the scope of his registration category as a dealing representative of a mutual fund dealer.”

10. Paragraph 22 of the Settlement Agreement states:

“The Respondent admits that between September and October 2013, he processed trades in the accounts of 9 clients of Investors Group and failed to maintain adequate records of any instructions that he received from the clients in respect of the transactions and any fee or risk disclosure that he provided to the clients in respect of the trades contrary to MFDA Rules 5.1 (b) and 2.1.1.”

11. As is well known, MFDA rules provide that a dealer must receive prior authorization for any trade. The Respondent admits that he did not receive prior authorization for a number of trades, but recalls getting the required authorization in a number of these cases. He admits, however, that he cannot locate records of those authorizations. Not keeping adequate records is also a breach of MFDA rules. The transactions in the Settlement Agreement are therefore divided into two categories, unauthorized trading and keeping inadequate records.

12. The details of the transactions can be found in the Settlement Agreement.

## **Terms of Settlement**

13. Staff and the Respondent agreed to the following terms of settlement:
- (a) the Respondent is prohibited from conducting securities related business while in the employ of or associated with any Member of the MFDA for a period of 6 months from the date of the acceptance of the Settlement Agreement by a Hearing Panel of the MFDA;
  - (b) the Respondent shall pay a fine in the amount of \$15,000 subject to the following payment terms:
    - i. \$10,000 shall be paid on the date when the Settlement Agreement is accepted by a Hearing Panel of the MFDA; and
    - ii. \$5,000 shall be paid within 30 days of the date when the Settlement Agreement is accepted by a Hearing Panel of the MFDA.
  - (c) the Respondent shall pay costs in the amount of \$5,000 on the date when the Settlement Agreement is accepted by a Hearing Panel of the MFDA;
  - (d) if the Respondent fails to comply with subparagraph (b)(ii) above, then without further notice to the Respondent, the Respondent shall summarily be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA; and
  - (e) if the Respondent becomes an Approved Person of a Member in the future, he will comply with MFDA Rules 2.3.1(a), 2.2.1, 5.1(b) and 2.1.1.

## **Acceptance of Settlement Agreement**

14. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

15. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.

16. A six month prohibition is a significant penalty and indicates the seriousness of the conduct. Moreover, the Respondent has been out of the industry since 2013 as a result of his conduct.

17. The clients were made whole by Investors Group, by giving clients the option of annulling the unauthorized trades.

18. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct, recognizes its seriousness, and has exhibited remorse.

19. The penalty imposed is not out of line with recent cases cited by counsel and is consistent with the MFDA Penalty Guidelines.

20. The Respondent has never been the subject of a disciplinary proceeding by the MFDA and cooperated with Staff during its investigation into his conduct. By entering into the Agreement, the Respondent saved the MFDA the time, resources, and expense associated with conducting a full hearing of the allegations.

21. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.”

22. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter.

23. As a recent Panel stated (*Re Keshet*, File No. 201419 at paragraph 7): “It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness.” There are many similar statements by MFDA Panels.

24. The penalty agreed to in this case clearly falls within “a reasonable range of appropriateness.”

25. For the above reasons we accepted the Settlement Agreement.

**DATED** this 24<sup>th</sup> day of May, 2016.

“Martin L. Friedland”

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Martin L. Friedland, C.C., Q.C.  
Chair

“Greg Juby”

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Industry Representative

“Kenneth P. Mann”

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