



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: Carmen G. Moerike

Heard: May 27, 2010 in Regina, Saskatchewan
Reasons for Decision: July 28, 2010

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Garrett Wilson, Q.C.
Alan Caplan
Kathleen Jost

Chair
Industry Representative
Industry Representative

Appearances:

Maria L. Abate)	For the Mutual Fund Dealers Association of
)	Canada
Ken Karwandy)	For the Respondent
)	

1. These proceedings were commenced in June 2009, by service upon Carmen G. Moerike (the “Respondent”), in compliance with the Rules of the Mutual Fund Dealers Association (“MFDA”), a Notice of Hearing alleging that he, while registered as a mutual fund salesperson (an “Approved Person” as defined by MFDA By-law No. 1), committed the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between January 11, 2002 and January 28, 2008, the Respondent borrowed monies from clients BC and MF to finance his outside business activities, thereby giving rise to an actual 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 clients, contrary to MFDA Rule 2.1.4 and MFDA Rule 2.1.1.

Allegation #2: From November 2002 to November 2007, the Respondent accepted and held a general power of attorney or other similar authorization for clients BC and MF contrary to MFDA Rule 2.3.1(a).

Allegation #3: Between September 25, 2006 and March 28, 2007, the Respondent failed to comply with the policies and procedures of the Members for which he was an Approved Person by failing to disclose to the Members his personal financial dealings with clients BC and MF, thereby interfering with the ability of the Members to supervise his activities, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

2. As directed by the Notice of Hearing, this matter first came before this Panel on August 5, 2009, by way of teleconference, an electronic hearing as provided by Rule 5 of the Rules of Procedure of the MFDA. Both the MFDA and the Respondent were represented by counsel and acknowledged that all procedural requirements had been met. The Notice of Hearing and Proof of Service were filed before the panel and were accepted as Exhibits #1 and #2. At the request of both counsel, the Hearing was adjourned to November 13, 2009 to be further spoken to.

3. On November 13, 2009, the matter was again dealt with by electronic hearing with both counsel present. At the request of counsel, who both represented that a Settlement Agreement might be achieved, the matter was again adjourned, this time to May 27, 2010, at Regina, Saskatchewan.

4. It should be noted that no Reply, as provided by Rule 8 of the MFDA Rules of Procedure, was ever filed.

5. On May 27, 2010, the Hearing Panel assembled at Regina, Saskatchewan, as a Settlement Hearing as provided by Rule 15 of the MFDA Rules of Procedure. Ms. Abate and Mr. Karwandy were personally present, as was the Respondent.

6. Upon the motion of Ms. Abate under Rule 15.2(2), the Panel ordered that the Hearing be held in the absence of the public, an exemption being made for the wife of the Respondent who was also present.

7. Notice of Settlement Hearing as required by Rule 15.2(1) was provided and acknowledged and accepted as Exhibit #3. The Settlement Agreement, dated April 28, 2010, was then filed and accepted as Exhibit #4.

8. The Settlement Agreement placed before the Panel for our consideration is as follows:

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 Prairie 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, Carmen G. Moerike.

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 IX or X) 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 is currently not registered in the securities industry in any capacity.

7. From April 16, 2007 to April 6, 2009, the Respondent was registered in Saskatchewan, Alberta, British Columbia and Manitoba as a mutual fund salesperson with IPC Investment Corporation ("IPC"). The Settlement Agreement concerns events that transpired while the Respondent was working as a mutual fund salesperson in Regina, Saskatchewan.

8. The Respondent was previously registered in the same jurisdictions as a mutual fund salesperson with the following Members: (a) from November 17, 2006 to April 16, 2007, FundEx Investments Inc. ("FundEx"); and (b) from October 2000 to November 2006, with Rice Financial Group Inc. ("Rice Financial").

9. Rice Financial became an MFDA Member on January 11, 2002. IPC became an MFDA Member on March 8, 2002 and FundEx became an MFDA Member on April 12, 2002.

Outside Business Activities

10. The Respondent participated in several disclosed and approved outside business activities, including: (a) CCC Acres Inc. ("CCC Acres"); and (b) 606177 Saskatchewan Ltd. ("606177 Saskatchewan").

11. CCC Acres is a company incorporated in the state of Texas. At all material times, the Respondent was the President and sole Officer and Director of CCC Acres. CCC Acres invests in real estate in Canyon Lake, Texas. CCC Acres purchases undeveloped land with the aim of development and resale for profit.

12. 606177 Saskatchewan is a company incorporated in Saskatchewan. It is owned and operated by the Respondent. The Respondent states that 606177 Saskatchewan is a holding company for CCC Acres and Moerike Financial Services, the company through which he is paid the commissions and fees he earns as a mutual fund salesperson.

13. The Respondent disclosed CCC Acres, 606177 Saskatchewan and Moerike Financial Services as ongoing outside business activities to his Member(s) and the applicable local securities regulatory authorities, in accordance with MFDA requirements. All three companies are listed on the Respondent's profile in the National Registration database ("NRD").

Personal Financial Dealings, Acting as Executor & Powers of Attorney

14. In 1997, the Respondent was a mutual fund salesperson with Halmac. BC was a client of Halmac. At this time, the Respondent, through his company CCC Acres, borrowed \$80,000 US, on an interest-free basis, from BC.

15. In March 2000, Halmac was purchased by Rice Financial. The Respondent's registration as a mutual fund salesperson was transferred to Rice Financial and BC transferred his account(s) to Rice Financial.

16. On January 11, 2002, Rice Financial became a Member of the MFDA.

17. MF was also a client of Rice Financial. In November 2002, the Respondent was named as the executor of MF's estate and was granted MF's power of attorney.

18. On May 1, 2003, the Respondent borrowed \$135,485.06 CDN from MF. The loan was made payable to 606177 Saskatchewan and in return, the Respondent provided MF with a promissory note from 606177 Saskatchewan. The promissory note stated that the loan was for a term of five years with an annual interest rate of 5.5%.

19. On August 25, 2005, the Respondent borrowed a further \$50,000 US from BC. This second loan was made payable to CCC Acres and in return, the Respondent provided BC with a promissory note from CCC Acres providing that the loan was for a term of one year with an annual interest rate of 9%.

20. In July 2006, the Respondent was named as the executor of BC's estate and was granted BC's power of attorney.

21. On September 25, 2006, Rice Financial conducted a "Branch Environment Review" on the Respondent's branch. During the review, the Respondent informed

Rice Financial that he held powers of attorney for two clients but did not disclose that he had borrowed funds from the clients for his outside business

22. Shortly thereafter, in mid-November 2006, the Respondent resigned from Rice Financial and transferred to FundEx.

23. BC did not transfer his account(s) to FundEx. MF did transfer her account(s) to FundEx.

24. On September 25, 2006, in anticipation of the Respondent transferring his registration from Rice Financial to FundEx, FundEx required the Respondent to complete and submit a "Due Diligence Questionnaire". The form required the Respondent to disclose any existing conflicts of interests with clients.

25. The Respondent disclosed the powers of attorney which he held for BC and MF on the Due Diligence Questionnaire but did not disclose the outstanding loans to BC and MF. Effective November 17, 2006, the Respondent joined FundEx.

26. In April 2007, the Respondent resigned from FundEx and transferred to IPC.

27. On March 28, 2007, prior to the transfer of his registration to IPC, IPC required the Respondent to complete and submit a "Recruiting Profile and Due Diligence Form". The form required the Respondent to disclose any existing conflicts of interest with clients including but not limited to, personal borrowing or lending, business associations and any designations as executor in client wills.

28. The Respondent completed the Recruiting Profile and Due Diligence Form but did not disclose any personal dealings or conflicts of interest with any clients, including BC and MF.

29. BC did not transfer his account(s) to IPC. MF did transfer her account(s) to IPC.

30. On July 24, 2007, the second loan from BC to CCC Acres in the amount of \$50,000 US was renewed. A further promissory note was provided to BC from the Respondent. The promissory note stated that the loan was for a term of one year and with an annual interest rate of 9%.

31. On October 17, 2007, IPC commenced an investigation of the Respondent's activities in response to a letter it received expressing concerns about the Respondent's dealings with clients.

32. IPC's investigation revealed that the Respondent had: (i) participated in personal financial dealings with clients; (ii) had provided a false statement on due diligence documentation which specifically requested the disclosure of any personal financial dealings with clients and (iii) failed to disclose that he had been appointed power of attorney and executor of an IPC client.

33. On October 31, 2007, MF removed the Respondent as the executor of her estate

and revoked the power of attorney granted to him.

34. On November 2, 2007, BC revoked the power of attorney he had granted to the Respondent and on December 8, 2007 removed the Respondent as the executor of his estate.

35. On November 2 and 23, 2007, the Respondent made payments in the amounts of \$75,000 CDN and \$57,108.43 CDN, including interest in the amount of \$2,108.43 CDN, to BC in respect of the two outstanding loans from BC.

36. By letter dated January 23, 2008, IPC notified the Respondent that he would be terminated unless, among other things, he paid a fine and administrative costs relating to IPC's investigation of his activities and provided evidence of the repayment of the client loans. The Respondent was given 30 days to comply.

37. On January 28, 2008, the Respondent repaid the loan owing to MF.

38. On January 29, 2008, the Respondent informed IPC that he intended to comply with the requirements set out in IPC's January 23, 2008 letter. On February 27, 2008, the Respondent provided IPC with proof that he had satisfied IPC's requirements, including repayment of the loans to BC and MF.

39. The Respondent has cooperated fully with Staff's investigation.

40. There is no evidence of client complaints or losses in relation to the foregoing conduct. There is no evidence that the Respondent intended to defraud the clients.

41. Neither power of attorney was ever used and the Respondent did not exercise his duties as executor for either client.

V. CONTRAVENTIONS

42. The Respondent admits that by borrowing monies from BC and MF to finance his outside business activities, the Respondent placed his own interests above those of the clients, thereby giving rise to an actual or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.

43. The Respondent admits that by accepting and holding power of attorney or other similar authorization for BC and MF, the Respondent acted contrary to MFDA Rule 2.3.1(a).

44. The Respondent admits that by failing to comply with the policies and procedures of the Members for which he was a mutual fund salesperson by failing to disclose to the Members his personal financial dealings with clients BC and MF, the Respondent interfered with the ability of the Members to supervise his activities, contrary to MFDA Rules 1.1.2 and 2.5.1.

VI. TERMS OF SETTLEMENT

45. The Respondent agrees to the following terms of settlement:
- (a) The Respondent shall pay a fine in the amount of \$5,000 pursuant to MFDA By-Law No. 1, section 24.1.1(b);
 - (b) The Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-Law No. 1; and
 - (c) The Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

46. 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 & X 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.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

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

48. 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 its 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.

49. 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. 24.1.2 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.

50. 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 it him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

51. 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 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

52. 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.

53. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it 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

54. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

56. This Settlement Agreement may be signed in one or more counterparts which

together shall constitute a binding agreement.

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

Dated: April 28, 2010

9. Ms. Abate, submitted that the Settlement Agreement should be accepted and in the course of her submission referred the Panel to a number of factors that have become nearly standard protocol by reason of their adoption by Hearing Panels over the years, almost without exception, and these will be specifically itemized below.

10. At the conclusion of Ms. Abate's submission, the Panel, mindful of Rule 15.3(1) that limits the consideration of facts to those contained in the Settlement Agreement "unless the parties consent", advised both counsel that it did have some inquiries of a factual nature, and these were outlined by the Chair. Mr. Karwandy stated that he was willing to supply the information requested and, with Ms. Abate's consent, did so in a very forthright manner.

11. The two clients, B.C. And M.F., who are named in the Allegations and who were both clients of the Respondent, were single individuals, living alone and almost totally bereft of family. The Respondent became their trusted adviser and confidant to an extent beyond that of a financial representative. On the advice of the Respondent, both clients met with Mr. Karwandy, in the absence of the Respondent. On their instructions, Mr. Karwandy prepared and had the clients execute a general form of Power of Attorney appointing the Respondent. Both clients also executed wills prepared by Mr. Karwandy and in each case the Respondent was appointed as sole executor. No actions were taken by the Respondent under the authority conferred by either Power of Attorney. The Powers of Attorney have been relinquished as have the executor appointments.

12. The nature of the Respondent's relationships with B.C. and M.F. was finally brought to the attention of the last Member where the Respondent was registered by a member of the Respondent's staff.

13. Mr. Karwandy advised the Panel that the Respondent has repaid all the loans he received from B.C. and M.F., with interest according to the original terms of the loans. The “without interest” loans have been repaid to B.C. without interest, but the matter of compensation for the lack of interest is in negotiation with B.C.’s current solicitor.

14. Mr. Karwandy further advised the Panel that the Respondent is 67 years of age, has sold his insurance and financial business at less than value due to the publicity surrounding these Allegations, and is fully retired. The Respondent has paid the investigation costs of the Member in the amount of \$6,000 and has deposited the sum of \$5,000 with the MFDA to secure payment of the fine identified in the Settlement Agreement. Mr. Karwandy also pointed out that the Respondent has incurred legal costs during the inception of these proceedings. The Respondent had no prior sanctions.

15. Mr. Karwandy joined with Ms. Abate in urging the Panel to accept the Settlement Agreement.

16. The Hearing Panel considered the Settlement Agreement, keeping in mind that the primary goal of securities regulation and enforcement is the protection of the investor, and the following factors identified by Ms. Abate:

- (i) The seriousness of the allegations admitted to;
- (ii) The Respondent’s past conduct;
- (iii) The Respondent’s experience and level of activity;
- (iv) Whether the Respondent recognizes the seriousness of his improper activity;
- (v) The harm suffered by the Respondent’s clients;
- (vi) The benefits received by the Respondent as a result of his conduct;
- (vii) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate therein;
- (viii) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent’s improper activities;
- (ix) The need to deter not only the Respondent but also any others who participate in the capital markets from engaging in similar improper activity;

- (x) The need to alert others who are permitted to engage in the capital markets to the consequences of inappropriate activities; and
- (xi) Previous decisions made in similar circumstances.

17. The Hearing Panel had some reservations about the adequacy of the Settlement Agreement. We noted particularly that the permanent prohibition in paragraph 45(b) related only to activity with MFDA Members. We recognized that the MFDA does not have jurisdiction beyond its own borders, but we felt that the public might not easily understand that as the reason for the limited prohibition.

18. We also had concern that the Settlement Agreement did not fully address items (v) and (vi) itemized above with respect to the “without interest” loans received by the Respondent and, to this point at least, repaid only without interest.

19. The Panel acknowledged that the Settlement Agreement had been negotiated by the two parties, both sophisticated and cognizant of their respective interests, and that the Panel should not lightly interfere with their final product, but determined to ask the Parties if they would agree to remove the limitation in the permanent prohibition. If so, with such amendment, the Settlement Agreement would be accepted.

20. Both Ms. Abate and Mr. Karwandy agreed to the proposal and the removal from the permanent prohibition of the words “while in the employ of or associated with any MFDA Member.”

21. Accordingly, the Hearing Panel has accepted the Settlement Agreement and executed the Order as amended.

DATED this 28th day of July, 2010.

“Garrett Wilson”

Garrett Wilson, Q.C.,
Chair

“Alan Caplan”

Alan Caplan,
Industry Representative

“Kathleen Jost”

Kathleen Jost,
Industry Representative

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