



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: Brian Edward Mark Nerdahl

Heard: June 14, 2010 in Toronto, Ontario
Reasons for Decision: July 15, 2010

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Fred Kaufman, C.M., Q.C.
Guenther Kleberg
Robert C. White

Chair
Industry Representative
Industry Representative

Appearances:

H.C. Clement Wai)	For the Mutual Fund Dealers Association of
)	Canada
Clarke Melville)	For the Respondents
)	
)	

Facts

1. As detailed in the Settlement Agreement produced at the hearing, the facts which gave rise to this case are as follows:

Registration History

6. From May 1989 to February 2, 2005, the Respondent was registered in Ontario as a mutual fund salesperson with Clarica Investco Inc. (“Clarica”).
7. From June 2005 to July 5, 2005, the Respondent was registered in Ontario as a mutual fund salesperson with Armstrong & Quaille Associates Inc. (“Armstrong & Quaille”).
8. From July 11, 2005 to May 17, 2006 the Respondent was registered in Ontario as a mutual fund salesperson with Legacy Investment Management Inc. (“Legacy”). The Respondent was terminated by Legacy as a result of the events described herein. The Respondent is not currently registered in the securities industry in any capacity.
9. Clarica has been a Member of the MFDA since January 2002. On June 25, 2007, Clarica changed its name to Sun Life Financial Investment Services (Canada) Inc.
10. Armstrong & Quaille has been a Member of the MFDA since January 2002.
11. Legacy has been a Member of the MFDA since June 2002.

Outside Business Activity – Commonwealth Capital Corporation

12. Commonwealth Capital Corporation (“Commonwealth”) was a company incorporated pursuant to the laws of Ontario. Commonwealth described itself as a “private wealth management service organization”. Commonwealth was dissolved in April 2006.
13. The Respondent was introduced to Commonwealth by BH, the sole director and officer of Commonwealth and an acquaintance of the Respondent.

14. RF and LF are spouses and were clients of Clarica. The Respondent was the mutual fund salesperson responsible for their accounts.
15. In February 2002, the Respondent facilitated a loan of \$50,000 from RF and LF to Commonwealth for a term of 5 years. The loan bore interest at 8% per annum calculated semi-annually. Interest payments were to be paid annually from the date of the commencement of the loan. Attached to the application form was a promissory note to be completed and executed by BH on behalf of Commonwealth upon approval of the application.
16. Shortly thereafter, RF and LF received a certificate from Commonwealth entitled “Private Loan Placement Program” confirming the principal amount, term and the interest rate of the loan.
17. Between February 2002 and July 2004, the Respondent facilitated loans by fifteen (15) other clients in Commonwealth, as well as other individuals, in the same manner as RF and LF, all without obtaining written authorization from Clarica to do so. The Respondent was the mutual fund salesperson responsible for all of these clients’ accounts. In several instances, the clients redeemed investments in their accounts to finance their loans to Commonwealth.
18. In total, the Respondent facilitated investments in the amount of approximately \$590,671.46 in Commonwealth, \$391,671.46 of which were made by the following 17 clients of Clarica:

Clarica Client	Date of Application and Promissory Note	Amount	Interest Rate	Maturity date	Renewed to
RF & LF	1-Feb-02	\$50,000.00	8.00%	1-Feb-07	
DW	18-Feb-02	\$25,000.00	8.00%	18-Feb-07	
DW	18-Sep-02	\$25,000.00	8.00%	18-Sep-07	
HS & KS	17-Jan-03	\$21,000.00	7.50%	20-Jan-08	

Clarica Client	Date of Application and Promissory Note	Amount	Interest Rate	Maturity date	Renewed to
SB	9-May-03	\$80,000.00	7.50%	9-May-08	
CS	26-May-03	\$21,000.00	7.50%	26-May-08	
CB	27-May-03	\$16,183.56	6%	27-May-04	27-May-05
EG & CG	6-Jun-03	\$50,000.00	8%	6-Jun-07	
EN	30-Sep-03	\$10,000.00	7.50%	3-Oct-08	
AO	20-Oct-03	\$10,000.00	7.50%	21-Oct-08	
WCC	1-Dec-03	\$50,000.00	6%	1-Dec-04	1-Dec-05
DW	9-Feb-04	\$13,000.00	7.50%	9-Feb-09	
MB	9-Feb-04	\$10,487.90	7.50%	9-Feb-09	
DW	17-Feb-04	\$2,000.00	7.50%	17-Feb-09	
GP & DP	25-Feb-04	\$5,000.00	6%	25-Feb-05	25-Feb-06
JB	29-May-04	\$3,000.00	6.25%	28-May-06	
TOTAL		\$391,671.46			

19. Beginning in 2005, the clients did not receive the interest payable on their promissory notes from Commonwealth. Although the clients' investments were purportedly collectively secured by a mortgage on a retirement residence in Kitchener, Ontario, none of the investors have received any repayment or return of the amounts owing to them.

Outside Business Activity – Canadian Humanitarian Trust

20. In 2006, while a mutual fund salesperson with Legacy, the Respondent facilitated participation by at least 7 individuals, one of whom was a client of Legacy, in the Canadian Humanitarian Trust ("CHT"), a charitable donation program. The 7 individuals made donations in the total amount of at least \$24,105, for which the Respondent was entitled to receive commissions of approximately 17% of the amounts invested.

21. CHT was purportedly structured to allow taxpayers the opportunity to increase their level of charitable donations and to receive personal tax savings in the form of charitable donation tax credits.

22. In the fall of 2005, the Respondent had sought permission from Legacy to facilitate the participation of clients in CHT. The Respondent was advised by Legacy at that time that CHT was not a product approved for clients of Legacy.

23. In 2006, Legacy learned that the Respondent was recommending and facilitating participation by clients in CHT.

24. Legacy conducted an internal investigation into the matter. The Respondent failed to cooperate with the investigation and in May 2006, Legacy terminated the Respondent.

Contraventions

2. Based upon the facts set out above, the Respondent admits to having committed the following violations (as stated in the Settlement Agreement, the wording of which differs slightly from the wording used in the original Notice of Hearing):

25. The Respondent admits that by facilitating loans by 17 clients of Clarica and others in the total amount of approximately \$590,671.46 to Commonwealth between February 2002 and July 2004, he had and continued in an occupation that was not approved by Clarica, contrary to MFDA Rule 1.2.1(d).

26. The Respondent admits that by facilitating participation by a client and others in the amount of approximately \$24,000 in CHT between January 2006 and May 2006, he had and continued in an occupation that was not approved by Legacy, contrary to MFDA Rule 1.2.1(d).

Penalties

3. The penalties agreed upon by the parties, as stated in the Settlement Agreement, are as follows:

27. 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;
- (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 shall pay costs to the MFDA in the amount of \$3,000, pursuant to section 24.2 of MFDA By-law No. 1.

Discussion

4. It is well settled that hearing panels should not interfere lightly in negotiated settlements as long as the penalties proposed are within a reasonable range of appropriateness given the conduct of the Respondent. As was said by the British Columbia Court of Appeal in *B.C. Securities Commission v. Seifert*, 2007 BCCA 484,

Settlements assist the Commission that its overriding objective, the protection of the public, is met ... They provide the means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.

5. So, too, with disciplinary actions undertaken by the MFDA. There is no doubt that the Respondent's misconduct was serious. It contravened the Rules of the Association and it caused serious losses to the investors involved. On the other hand, this is the Respondent's first involvement in a disciplinary matter. He has accepted responsibility for his actions and he cooperated fully and promptly with MFDA Staff. He was terminated from the Member and has been out of the industry since then. And, with the acceptance of the Settlement Agreement, he will be barred from re-entering the industry.

6. Given all the circumstances, it was the panel's view that the terms of the Settlement Agreement fell within the bounds of appropriateness, and the Agreement was, therefore, accepted.

DATED this 15th day of July, 2010.

“Fred Kaufman”

The Hon. Fred Kaufman, C.M., Q.C.,
Chair

“Guenther Kleberg”

Guenther Kleberg,
Industry Representative

“Robert C. White”

Robert C. White,
Industry Representative