



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: Kenneth Allan Parker

Heard: August 18, 2020 by electronic hearing in Calgary, Alberta
Decision: August 18, 2020
Reasons for Decision: September 14, 2020

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC
Sean Shore
Richard Sydenham

Chair
Industry Representative
Industry Representative

Appearances:

Shelly Feld)	Director, Chief Litigation Counsel
)	
Justin Dunphy)	Senior Enforcement Counsel, Mutual Fund
)	Dealers Association of Canada
)	
Matthew Epp)	Counsel for the Respondent
)	
)	
Kenneth Allan Parker)	Respondent
)	
)	

I. BACKGROUND

1. On July 31, 2020 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 Kenneth Allan Parker (the “Respondent”).
2. The Respondent entered into a settlement agreement with Staff of the MFDA (“Staff”), dated August 6, 2020 (the “Settlement Agreement”) in which the Respondent agreed to a proposed settlement of matters.
3. The hearing, which would normally take place in Calgary, Alberta, was conducted via an electronic hearing on August 18, 2020 with the consent of the parties.
4. The parties jointly applied for an order to allow the hearing to proceed *in camera*, and after hearing representations, the application was granted.
5. On August 18, 2020, after hearing submissions from Enforcement Counsel and Counsel for the Respondent, this Hearing Panel approved the Settlement Agreement, and signed an Order reflecting that approval. These are our written reasons for doing so.

II. AGREED FACTS

Registration History

6. Between approximately February 20, 2008 and June 20, 2017, the Respondent was registered in Alberta, British Columbia, Ontario, Manitoba and Saskatchewan as the Chief Compliance Officer (“CCO”) and as a mutual fund salesperson/dealing representative¹ of Portfolio Strategies Corporation, a Member of the MFDA (“PSC” or the “Member”). He was also the Chief Financial Officer (“CFO”) of PSC during that period. Between May 29, 2008 and December 31, 2010, the Respondent was registered with PSC in the same categories in New Brunswick and between September 29, 2015 and June 20, 2017 in Quebec.
7. On June 20, 2017, PSC terminated the Respondent.

¹ On September 28, 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

8. Between August 17, 2006 and January 25, 2008, the Respondent was an Approved Person, President and CCO of a different Member of the MFDA.

9. Between January 1988 and June 2005, prior to becoming a registrant, the Respondent worked for the Alberta Securities Commission.

10. Effective August 2017, the Respondent joined Belay Wealth Inc. (“Belay”). Belay became a Member of the MFDA on June 14, 2018 and the Respondent has been registered as the CFO and as a Director of Belay since that time. The Respondent also intended to serve as CCO or Ultimate Designated Person (“UDP”) of Belay but the Alberta Securities Commission (“ASC”) imposed terms and conditions on his registration which did not permit the Respondent to be registered in either of those categories.

11. At all material times relevant to the conduct described the Respondent carried on business from the head office of PSC located in Calgary, Alberta.

Overview

12. Between April 2014 and February 2016, pursuant to his obligations as CCO of the Member, the Respondent submitted annual reports to the board of directors of the Member (“Board”) reporting on the status of compliance by the Member with its regulatory obligations. In his annual reports to the Board, the Respondent failed to accurately report on the status of the Member’s efforts to conduct branch and sub-branch reviews in compliance with MFDA Policy No. 5. The inaccurate content in the Respondent’s reports hindered the ability of the Member to assess its compliance with its regulatory obligations.

Failure to Prepare Accurate Compliance Reports to the Board

A. The 2012 MFDA Compliance Examination Report

13. Commencing on May 14, 2012, MFDA Compliance Staff (“MFDA Compliance”) attended at the Member’s head office and at a sample of the branches and sub-branches that the Member conducted business from at the time in order to evaluate the Member’s compliance with its regulatory obligations during the review period from May 1, 2009 to March 31, 2012 (“2012 MFDA Compliance Examination”). In a report dated October 9, 2012 (“2012 Compliance

Examination Report”), MFDA Compliance summarized the findings made during the 2012 MFDA Compliance Examination.

14. In the 2012 Compliance Examination Report, MFDA Compliance made a finding that the Member had not implemented a branch and sub-branch review program that was compliant with requirements set out in MFDA Policy No. 5. In particular, MFDA Compliance made findings that, during the review period:

- a) 12 of the 14 branches that the Member operated during the review period and 85 of the 124 sub-branches that the Member operated during the review period had never been subject to a branch review; and
- b) No branch review reports or other paperwork documented the review of the two branches that the Member claimed it had reviewed during the review period.

15. On November 14, 2012, the Respondent submitted an action plan to MFDA Compliance on behalf of the Member to address the findings that were set out in the 2012 MFDA Compliance Examination Report (“2012 Action Plan”). Along with the 2012 Action Plan, the Respondent submitted a branch and sub-branch review schedule (“Branch Review Schedule”) that contemplated the completion of branch and sub-branch reviews at each of the Member’s branch and sub-branch locations within a 3 year period.

16. Pursuant to MFDA Rule 2.5.3(b)(iv) and the policies and procedures of the Member, the Respondent was required as CCO to submit a report to the Board at least once each year providing an assessment of compliance by the Member and its Approved Persons with their regulatory obligations (“CCO Report”). In his annual CCO Reports, the Respondent included updates on the status of the Member’s implementation of its Branch Review Program.

B. The 2012 CCO Report

17. In his 2012 CCO Report dated June 30, 2013, the Respondent reported to the Board that the branch and sub-branch audit schedule was a primary area of concern for the MFDA and that, during the calendar year 2012, “one branch was reviewed” and “[a]pproximately 31 sub-branch reviews were performed” by PSC staff. The Respondent further reported to the Board that he believed that the Member had “adequate staff to meet its compliance requirements” and that, in

response to the branch review findings of MFDA Compliance, he had submitted the Branch Review Schedule (described above in paragraph 15) which had been accepted by the MFDA.

C. The 2013 CCO Report

18. According to the National Registration Database (“NRD”), as of January 1, 2013, the Member was conducting business from 15 branch locations and 150 sub-branch locations.

19. In his 2013 CCO Report dated April 1, 2014, the Respondent reported that, during 2013, 7 branches and 20 sub-branches had been reviewed by PSC staff. The Respondent further reported that he believed that the Member had adequate staff to meet its compliance requirements, and “[t]he review schedule previously given to the MFDA is being met”.

20. Contrary to the Respondent’s statement in the 2013 CCO Report, the Branch Review Schedule that was submitted to MFDA Compliance in 2012 was not being met.

D. The 2014 MFDA Compliance Examination Report

21. Commencing on May 26, 2014, MFDA Compliance attended at the Member’s head office and at a sample of the 16 branches and 173 sub-branches from which the Member conducted business at that time in order to evaluate the Member’s compliance with its regulatory obligations during the review period from April 1, 2012 to March 31, 2014 (“2014 MFDA Compliance Examination”). In a report dated September 10, 2014 (“2014 Compliance Examination Report”), MFDA Compliance summarized the findings made during the 2014 MFDA Compliance Examination.

22. In the 2014 Compliance Examination Report, MFDA Compliance made findings (similar to the findings in the 2012 Compliance Examination Report) that the Member had not implemented a branch and sub-branch review program that was compliant with requirements set out in MFDA Policy No. 5. In particular, MFDA Compliance made findings that:

- a) the Member had not completed 1 branch review and 34 sub-branch reviews that had been scheduled for completion during 2013 (according to the 2012 Branch Review Schedule) and none of those locations had ever been reviewed;

- b) 13 additional sub-branches that had previously been subject to a branch review in 2010 had not been reviewed during the 3 years preceding the 2014 compliance examination; and
- c) the primary compliance person responsible for conducting branch reviews had other compliance responsibilities that appeared to limit the person's availability to conduct and complete branch reviews.

E. The 2014 CCO Report

23. In his 2014 CCO Report dated April 21, 2015, the Respondent reported to the Board that the branch and sub-branch audit schedule, and the Member's compliance resources to complete branch and sub-branch reviews, were primary areas of concern for the MFDA. The Respondent reported that "[s]eventeen sub-branch reviews were performed" by PSC staff during 2014 and that "[f]ollowing discussions with MFDA [Compliance] coming out of the 2014 [MFDA Compliance Examination], we expect to add one more head office compliance person to ensure that PSC has adequate staff to meet its compliance requirements." The Respondent reported to the Board that "[t]he review schedule previously given to the MFDA is being met."

24. Contrary to statements made by the Respondent in the 2014 CCO Report, the Branch Review Schedule that was submitted to MFDA Compliance in 2012 was not being met.

F. The 2015 CCO Report

25. According to the NRD, as of January 1, 2015, the Member was conducting business from 15 branch locations and 166 sub-branch locations.

26. In 2015, the Member hired one additional head office compliance person. It was anticipated that among other duties, this new employee would provide additional support to the Member's branch review program.

27. In his 2015 CCO Report dated February 11, 2016, the Respondent inaccurately reproduced the statement that he had recorded in his 2014 CCO Report that "[s]eventeen sub-branch reviews were performed" by PSC staff during 2015, when in fact 13 sub-branch reviews had been completed. The Respondent reported to the Board that "one more head office compliance

person...was added to ensure that PSC has adequate staff to meet its compliance requirements” and that “[t]he review schedule previously given to the MFDA is being met.”

28. Contrary to statements in the 2015 CCO Report, the Branch Review Schedule that the Respondent had submitted to MFDA Compliance in 2012 was not being met.

G. The 2016 MFDA Compliance Examination Report

29. Commencing on September 19, 2016, MFDA Compliance attended at the Member’s head office and at a sample of the 10 branches and 203 sub-branches from which the Member conducted business at that time in order to evaluate the Member’s compliance with its regulatory obligations during the review period from April 1, 2012 to July 31, 2016 (“2016 MFDA Compliance Examination”). In a report dated March 22, 2017 (“2016 Compliance Examination Report”), MFDA Compliance summarized the findings made during the 2016 MFDA Compliance Examination.

30. In the 2016 Compliance Examination Report, MFDA Compliance made findings (similar to the findings in the 2012 and 2014 Compliance Examination Reports) that the Member had not implemented a branch and sub-branch review program that was compliant with requirements set out in MFDA Policy No. 5. In particular, MFDA Compliance made findings that:

- a) 33 of the Member’s 203 sub-branches had never been subject to a branch review²; and
- b) 3 of the Member’s 10 branches and 43 additional sub-branches that had previously been subject to a branch review³ had not been subject to a subsequent review during the 3 year period preceding the 2016 MFDA Compliance Examination.

31. At the time when the Respondent submitted the 2013, 2014 and 2015 CCO Reports to the Board, he knew or ought to have known that the number of branch and sub-branches reviews performed during the relevant periods did not meet the requirements of the Branch Review

² Including 16 sub-branches that had been scheduled for completion during 2014 or 2015 according to the Branch Review Schedule but were not reviewed and 17 sub-branches that had been registered with the Member since 2012 but had not been included on the Branch Review Schedule.

³ Sometime between 2010 and 2013.

Schedule. The Respondent's inaccurate statements to the Board hindered the Member's ability to assess its compliance with applicable regulatory requirements.

Additional Factors

32. Prior to this proceeding, the Respondent had no previous disciplinary history.

33. The Respondent and PSC are engaged in on-going litigation.

34. On February 5, 2013, PSC added the registration category of Investment Fund Manager ("IFM") to its registration as a mutual fund dealer and thereafter began providing IFM services to issuers. The Respondent states that he was responsible for some additional compliance responsibilities as a result of this change.

35. The Respondent fully cooperated with Staff's investigation of this matter and has saved the MFDA the time and expense associated with a contested hearing.

III. CONTRAVENTIONS

36. The Respondent admits that between April 2014 and February 2016, the Respondent submitted annual reports to the Board which failed to accurately report on the status of branch and sub-branch reviews required to be completed by the Member in order to comply with MFDA Policy No. 5, thereby failing to carry out his responsibilities as CCO, and hindering the ability of the Member to assess its compliance with MFDA By-laws, Rules, Policies, and applicable securities legislation contrary to MFDA Rule 2.5.3(b) (iv).

IV. TERMS OF SETTLEMENT

37. The Settlement Agreement provides that the Respondent has agreed to pay a fine of \$20,000, which shall be payable on the date the Settlement Agreement is accepted by an MFDA hearing panel, pursuant to section 24.1.1(b) of MFDA By-law No. 1, and costs of \$5,000, which shall be payable on the date the Settlement Agreement is accepted by an MFDA hearing panel, pursuant to section 24.2 of MFDA By-law No. 1, and further that if the Respondent becomes registered as a Chief Compliance Officer of a member of the MFDA in future he shall comply with MFDA Rule 2.5.3(b).

V. ANALYSIS

38. A Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a settlement agreement unless it views the proposed penalty as clearly falling outside the range of reasonableness. In the view of the Hearing Panel, this Settlement Agreement advances the public interest and is reasonable and proportionate, having regard to all of the circumstances.

39. We have arrived at this conclusion having considered the following factors:

Nature of the Misconduct: Failing to accurately report on the status of branch and sub-branch reviews in order for the Member to be in compliance with MFDA Policy No.5.

40. The Respondent's misconduct referenced in the Contravention is serious. It relates to repeat compliance deficiencies during sales compliance examinations of the Member conducted with respect to the periods April 2014 and February 2016 which impact an important function and mandate of persons registered as Chief Compliance Officers – the obligation to report at least annually to the Board of Directors of the Member.

41. To address the deficiencies, the Respondent submitted an action plan to MFDA Compliance staff which included a Branch Review Schedule that contemplated completion of branch and sub-branch review at each of the Member's branch and sub-branch locations within a three-year period.

42. The Respondent was required to submit a report to the Board at least once each year providing an assessment of compliance by the Member and its Approved Persons with regulatory requirements including the MFDA By-law and Policies. (the "CCO Report"). Such a report, as is noted below, is meant to provide reasonable assurance to the Board of Directors of the Member that all standards and requirements under MFDA requirements and applicable securities legislation are being met.

43. Contrary to statements contained in the Respondent's CCO Reports for 2014 dated April 2015 and 2015 dated February 2016 that the Branch Review Schedule provided to MFDA Compliance was being met, such was not the case. This omission resulted in the Member being

left with an inaccurate understanding that all standards and requirements under the MFDA requirements and applicable securities legislation were being met.

44. Thus, contrary to the action plan submitted by the Respondent on behalf of the Member, the compliance deficiencies identified by MFDA in its 2012 and 2014 Compliance Examinations reports had not been addressed.

45. Further, despite repeated and further representations made by the Respondent in his CCO Reports concerning the adequacy of the Member's compliance staffing levels between 2014 and 2015, the branches and sub-branch reviews were not on track to be completed at each of the Member's business locations within the three-year period contemplated by the Branch Review Schedule submitted by the Respondent in November 2012 to MFDA.

46. The failure of the Respondent to accurately report to the Board about the status of the Member's branch review program hindered the ability of the Member to assess its compliance with its regulatory obligations and resulted in the Member having an inaccurate understanding of the state of compliance at the Member with respect to the Member's branch review program.

47. MFDA Compliance found during its 2014 and 2016 MFDA Compliance Examinations that the Member had not implemented a branch and sub-branch review program compliant with MFDA Policy No. 5.

48. The Respondent knew or ought to have known at the time of the CCO Reports to the Board dated April 2015 and February 2016 that the Branch Review Schedule established in 2012 was not being met. His inaccurate statements to the Board hindered the Member's ability to assess its compliance with the applicable regulatory requirements.

Obligations of the CCO

49. The core responsibility of the CCO is to monitor "adherence by the Member and any person conducting business on account of the Member to all applicable MFDA and securities legislation requirements." See MFDA Rule 2.5.3, National Instrument 31-103, Part 5, Section 5.2 - Responsibilities of the Chief Compliance Officer, MSN- 0037 and MSN-0057.

50. Further to that responsibility, Rule 2.5.3 (b)(iv) requires the CCO to submit a report to the Board or partners as frequently as necessary and not less than annually, for the purpose of assessing compliance by the Member and its Approved Persons with the By-laws, Rules and Policies and applicable securities legislation. The Board has a corresponding obligation to act on such reports and rectify any compliance deficiencies that have been noted. See MFDA Rule 2.5.3 and MSN-0037

51. MSN-0037 specifically states:

“ the MFDA expects the CCO’s annual report to the Board to identify and discuss material findings or issues relating to:... regulatory examinations... The operations of the compliance of supervisory functions, as well as any other material issues that occurred during the period covered by the report. Where an issue remains unresolved, the report should outline steps that will be taken to resolve the issue.

The Mandate of the CCO is to provide the Board of Directors (or equivalent) with reasonable assurance that all standards and requirements under MFDA requirements and applicable security legislation are being met.”

52. MFDA Policy No.5, which sets up the requirements for implementation of a proper branch review program, states as follows:

“Members are generally expected to perform an on-site review of their branches no less than once every three years. However, Members must review certain branches more frequently than once every three years if justified based on risk. Where, under unusual circumstances, a Member exceeds a three-year branch review cycle, the Member must be able to justify the longer review cycle by demonstrating that the branches that have not been subject to an on-site review are low risk and have been subject to alternative compliance review procedures performed by head office, such as offsite desk review. Under no circumstances however, should a Member never perform an on-site review of a branch.”

53. It is clear from authorities such as *Sentinel Financial Management Corp.* (Re) 2018 LNCMFDA 184 (MFDA File No. 201777, *De Thomas Wealth Management Corp.*(Re) MFDA File No. 2018133, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 25, 2019, and *Peak Investment Services Inc.*, MFDA File No. 202038, Settlement Agreement dated July 30, 2020, that previous hearing panels have held that failure to conduct branch and sub-branch reviews of all Member’s business locations within times specified in the Policy constitute contraventions of MFDA Policy No.5 and MFDA Rule 2.5.1.

Respondent's Experience in the Securities Industry

54. The Respondent had been employed at the ASC between January 1988 and June 2005 prior to becoming a registrant.
55. Between August 2006 and January 2008, the Respondent was an Approved Person, President and CCO of an MFDA Member.
56. From February 2008 to June 2017 the Respondent was registered as an Approved Person, CFO and CCO at PSC.
57. Since August 2017 the Respondent has been registered as the CFO and Director of Belay.
58. Given his long service and seniority in the securities industry we conclude the Respondent should have been aware of the importance of his duty to provide accurate reports to the Board and moreover, based on the guidance contained in MSN-0037, appreciate that such report is specifically designed to provide the Board with "reasonable assurance that all standards and requirements under MFDA requirements and applicable security legislation are being met." The reports that were provided by the Respondent to the Member very clearly failed to meet this standard that Respondent, given his experience and seniority in the securities industry, should have been aware of.

Respondent's Recognition of the Seriousness of the Misconduct

59. Counsel for the parties agree that the Respondent has demonstrated remorse, accepted responsibility for his misconduct and regrets that his CCO Reports submitted to the Board contained inaccurate statements.

Client Harm and Benefits Received by the Respondent

60. There is no evidence to suggest that the Respondent received a financial or other benefit through his conduct and there were no client complaints.

Additional Mitigating Factors

61. Additional mitigating factors include that the Respondent had no prior disciplinary record, he fully cooperated with Staff's investigation, entered into the Settlement Agreement and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing.

Deterrence

62. We were satisfied that in these circumstances a fine of \$20,000 is necessary and sufficient to achieve the goals of specific and general deterrence, having regard to the factors described above. It demonstrates that the Respondent's misconduct in all of the circumstances is serious and has significant consequences. The penalty in this amount will also deter others in the capital markets from engaging in similar activity.

Public interest and Proportionality

63. We took into consideration the fact that the Respondent despite his noncompliance, did provide the actual statistics recording how many branch reviews and sub-branch reviews were completed in each year (excluding the 2014 CCO Report). While this particular fact did not diminish the misconduct, it did provide information that would alert the Board to query the conclusions drawn by the Respondent.

64. We also took into consideration submissions by both Counsel as to the extent of the significant negotiations between the parties to support the conclusion that it would be in the public interest to accept the Settlement Agreement.

Integrity of the Capital Markets in the Regulatory Process

65. We accepted the joint submission of Counsel for the parties that the Settlement Agreement transparently described the misconduct engaged in by the Respondent and that the penalties imposed would foster confidence in the integrity of the capital markets and the regulatory process and convey to other persons in the CCO position of the importance of fully complying with their regulatory obligations.

VI. CONCLUSION

66. We have considered the existing precedents on penalty, as well as the MFDA non-binding Sanction Guidelines.

67. In summary, we find that the Settlement Agreement is in the public interest. As said, it is reasonable and proportionate, it addresses specific and general deterrence and will foster public confidence in the integrity of the Canadian capital markets, and the industry. For these reasons, the Settlement Agreement was approved.

68. We thank both Counsel and the Respondent for their cooperation during the hearing.

DATED this 14th day of September, 2020.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“Sean Shore”

Sean Shore
Industry Representative

“Richard Sydenham”

Richard Sydenham
Industry Representative

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