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: Md Ashanur Rahman

Heard: April 13, 2021 by electronic hearing in Toronto, Ontario
Decision: April 13, 2021
Reasons for Decision: June 10, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Emily Cole	Chair
Edward Jackson	Industry Representative
Selwyn Kossuth	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Md Ashanur Rahman	)	Respondent

I. INTRODUCTION

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada ("MFDA") to consider a settlement agreement dated March 17, 2021 ("Settlement Agreement") between staff of the MFDA ("Staff") and Md Ashanur Rahman ("Respondent").

2. After reviewing the Settlement Agreement and the material filed by Staff and hearing the submissions of counsel for Staff, the Hearing Panel accepted the Settlement Agreement and signed an order reflecting our approval. These are the reasons for our decision.

II. CONTRAVENTIONS

3. Based on the Agreed Facts set out below the Respondent admits that:

a) in 2017 and 2018, he engaged in personal financial dealings with clients by borrowing monies from clients, lending monies to a client, or depositing monies belonging to clients to his personal bank account, all of which gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1,

b) between May and June 2018, he aided a client to falsely portray monies as a gift to assist the client to secure a mortgage, thereby failing to observe high standards of ethics and conduct in the transaction of business and engaging in conduct or a practice which is unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1,

c) on October 24, 2017, he deposited $20,000 in cash, which he borrowed from a client, into bank accounts that he controlled in three separate transactions of less than $10,000 each, thereby circumventing the large cash transaction reporting requirements to the Financial Transaction and Reports Analysis Centre of Canada, contrary to MFDA Rule 2.1.1, and,

d) in 2018, he made false or misleading statements to the Member during an investigation into his conduct, contrary to MFDA Rule 2.1.1.

III. PROPOSED SANCTIONS

4. Staff and the Respondent agree and consent to the following proposed sanctions:

a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period 5 years from the date the Settlement Agreement is accepted,

b) the Respondent shall pay a fine in the amount of $20,000 upon acceptance of the Settlement Agreement,

c) the Respondent shall pay costs in the amount of $5,000 upon acceptance of the Settlement Agreement, and,

d) the Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4, 2.5.1, and 1.1.2.

IV. AGREED FACTS

Registration History

5. From July 23, 2013 to October 11, 2018, the Respondent was registered in Ontario as a dealing representative with Royal Mutual Funds Inc. (the "Member"), a Member of the MFDA.

6. On October 11, 2018, the Respondent resigned from the Member, and he is not currently registered in the securities industry in any capacity.

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

Personal Financial Dealing

Borrowing from Client AA

8. At all material times, client AA was a client of the Member whose accounts were serviced by the Respondent. Client AA was also the Respondent's friend and his realtor in connection with the Respondent's sale of his condominium and purchase of a new home in 2017.

9. During 2017, the Respondent borrowed $54,000 from client AA as follows:

a) $9,000 on or about September 20, 2017 to fund part of the deposit on the purchase of a new home by the Respondent;

b) $20,000 on or about October 24, 2017 to repay monies borrowed by the Respondent from another client, which is discussed further below; and

c) approximately $25,000 in 2017 so that the Respondent could pay personal expenses.

10. In each case, the Respondent promised to repay client AA from the proceeds of the eventual sale of his condominium. None of the loans were recorded in writing. None of the loans specified a repayment date or an interest rate, and the Respondent did not provide client AA with any security for the loans.

11. The Respondent did not disclose to the Member that he had borrowed $54,000 from client AA.

12. In December 2017, the Respondent's sale of his condominium closed. On December 29, 2017, the Respondent repaid $54,000 to client AA.

Borrowing from Client SH

13. At all materials times, client SH was a client of the Member whose accounts were serviced by the Respondent.

14. In or around October 2017, the Respondent met with client SH and asked to borrow $20,000. The Respondent wished to use the monies borrowed from client SH to pay down the Respondent's spouse's line of credit to improve their ability to secure a mortgage to purchase a new home. The Respondent promised client SH that he would repay the loan within seven days.

15. Client SH did not have $20,000 available but offered to borrow from his line of credit to lend the monies to the Respondent. The Respondent agreed to pay the interest incurred by client SH on the line of credit.

16. On or around October 17, 2017, client SH borrowed the $20,000 from a personal line of credit, and had the monies transferred to a bank account that the Respondent held jointly with his spouse. The Respondent used the $20,000 to pay down his spouse's line of credit.

17. The loan agreement between the Respondent and client SH was not recorded in writing and the Respondent did not provide client SH with any security for the loan.

18. On October 24, 2017, the Respondent repaid the $20,000 loan to client SH plus $19 in interest. The source of the $20,000 that the Respondent used to repay client SH was monies that he borrowed from client AA, as described above.

Depositing Cash Belonging to Client AA

19. On January 23, 2018, a business associate of client AA attended at the Respondent's branch and asked if the Respondent could hold $9,000 in cash to pass on to client AA. The Respondent agreed to do so.

20. Later the same day, client AA contacted the Respondent and told him that he would not be able to make it to the branch that day and asked the Respondent to continue to hold the money for him.

21. The Respondent deposited the $9,000 into his personal bank account, thereby commingling the $9,000 with his own monies. The Respondent states that he did so to safeguard the money.

22. Later the same day, client AA attended at the Respondent's branch to obtain the $9,000. The Respondent withdrew the $9,000 from his personal bank account and provided it to client AA.

Depositing Cash Belonging to Client BT

23. At all material times, client BT was a client of the Member whose accounts were serviced by the Respondent. Client BT was also an unregistered employee of the bank affiliated with the Member, who worked in the same branch location where the Respondent conducted business.

24. On or about May 30, 2018, client BT asked the Respondent if he would deposit $9,000 cash from client BT into the Respondent's personal bank account and provide client BT with a cheque for $9,000.

25. The purpose of the transaction was to make the money falsely appear to be a gift, so client BT could build up a down payment and meet the bank's requirements to secure a mortgage for the purchase of a new home.

26. On May 30, 2018, the Respondent received $9,000 cash from client BT, which he deposited into his personal bank account thereby commingling money from client BT with his own monies. On the same day, he repaid the $9,000 to client BT by cheque.

27. On June 8, 2018, client BT provided the Respondent with a further amount of $5,900 in cash for the same purpose described above. The Respondent again deposited the money that he received from client BT into his personal bank account and on the same day repaid the money to client BT by cheque.

Lending to Client BT

28. In or around June 2018, client BT asked the Respondent to lend him $25,000 for a down payment on the purchase of a new home.

29. The Respondent agreed to loan client BT the money that he requested, and on June 21 and June 29, 2018, the Respondent borrowed $11,000 and $14,000, respectively, from his personal line of credit, and transferred the money to client BT's personal bank account.

30. On August 31, 2018, client BT repaid $25,000 to the Respondent.

31. The loan agreement was not recorded in writing.

32. By virtue of the foregoing, the Respondent engaged in personal financial dealings with clients by borrowing monies from clients (clients AA and SH), lending monies to a client (client BT), and depositing monies belonging to clients (clients AA and BT) to his personal bank account, all of which gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the clients.

Conduct Unbecoming

33. As described above at paragraphs 23-27, the Respondent deposited into his bank account a total of $14,900 from client BT and provided clients BT with cheques totalling $14,900, for the purpose of making the monies falsely appear to be a gift, so client BT could meet the bank's requirements to secure a mortgage for the purchase of a new home.

34. By virtue of the foregoing, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and engaged in conduct or a practice which is unbecoming or detrimental to the public interest.

Avoiding Large Cash Transaction Reporting Requirements

35. At all material times, Approved Persons of the Member were required to adhere to a code of conduct, which, among other things, required its Approved Persons to know and comply with all policies designed to detect and deter money laundering. These policies included that all large cash transactions of $10,000 or more be reported to the Financial Transaction and Reports Analysis Centre of Canada ("FINTRAC").

36. On October 24, 2017, the Respondent borrowed $20,000 from client AA, which the Respondent used to repay monies he borrowed from client SH, as described above at paragraph 18. Client AA provided the $20,000 to the Respondent in cash.

37. The Respondent deposited the $20,000 cash he obtained from client AA into bank accounts that the Respondent controlled in three separate transactions of less than $10,000 each, thereby circumventing the large cash transaction reporting requirements of FINTRAC.

38. By depositing cash in this manner, the Respondent hindered the Member's ability to supervise his conduct and potentially detect that the Respondent had borrowed money from client AA.

Misleading the Member

39. At all material times, the Member's policies and procedures required Approved Persons to cooperate with internal and external investigations, and to provide "honest, accurate, complete and timely information."

40. In 2018, following the events described above, the investigative department of the Member interviewed the Respondent. During the interview, when asked about the $9,000 transaction involving client BT described above at paragraphs 24 and 26, the Respondent stated that the $9,000 was his own money that he loaned to client BT.

41. The Respondent's statement to the Member was false or misleading because, as described above, the $9,000 was cash the Respondent received from client BT, that the Respondent deposited into his own bank account and subsequently returned to client BT, so that client BT could falsely portray the money as a gift for the purpose of securing a mortgage.

Additional Factors

42. The Respondent has not previously been the subject of a MFDA disciplinary proceeding.

43. All client money obtained by the Respondent described in the Settlement Agreement was repaid by the Respondent.

44. The Member investigated the Respondent and reviewed his bank records and detected no other instances of personal financial dealing with Member clients or suspicious transactions.

45. None of the clients described in the Settlement Agreement complained to the Member.

46. The Respondent currently resides in Bangladesh. The Respondent has not been registered in the securities industry in any capacity since his resignation from the Member on October 11, 2018. The Respondent states that he is unemployed and has limited financial means.

47. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

V. ANALYSIS

a) Jurisdiction of the Hearing Panel

48. A Hearing Panel is authorized to either accept or reject a settlement agreement.

Section 24.4.3 of MFDA By-law No. 1

49. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

Mílewski (Re), [1999] I.D.A.C.D. No. 17.

Sterling Mutuals Inc. (Re), 2008 LNCMFDA 16 at para 37

50. Settlements are to be encouraged. They make a significant contribution to meeting the MFDA's primary objective of investor protection by providing a practical and efficient way of addressing misconduct in the securities industry. Where the Respondent takes responsibility and admits his misconduct and the parties can agree upon appropriate sanctions, settlements can save time and conserve the regulator's limited resources. Settlements also provide certainty and are likely to result in greater compliance with the sanctions imposed.

British Columbia (Securities Commission v. Seifert, [2006] B.C.J. No 225 at paras. 48-49 (S.C.), aff'd [2007] B.C.J. No 2186 at para. 31 (C.A.)

b) The Seriousness of the Misconduct

51. The Respondent admitted to serious misconduct:

a) Engaging in personal financial dealings,

b) Conduct unbecoming,

c) Avoiding large cash transaction reporting requirements, and,

d) Making false or misleading statements to the Member.

Engaging in Personal Financial Dealings

52. The Respondent admits that he borrowed $74,000 from two clients, loaned $25,000 to one client, and deposited $25,000, belonging to two clients, into his personal bank account. Each of these acts: borrowing and lending money to clients and depositing client funds in a personal bank account give rise to a conflict of interest and are contrary to MFDA Rule 2.1.4 - Conflicts of Interest. These acts are also contrary to MFDA Rule 2.1.1 – Standard of Conduct.

53. Hearing Panels have repeatedly held that borrowing money from a client gives rise to a conflict of interest under MFDA Rule 2.1.4. The Hearing Panel in *Gaunt (Re)* explained:

> A conflict of interest occurs when one party to a matter advances, uses or pursues his own interests in dealing with another person, to whom he has an obligation of dealing fairly, to the detriment of that other person or to his own advantage rather than the person to whom he owes the duty of fairness.

Gaunt (Re), 2013 LNCMFDA 63 at para. 47.

Piper (Re), 2018 LNCMFDA 31 at para. 12.

54. Hearing Panels have also found that there is a potential conflict of interest if an Approved Person lends money to a client or deposits client money into the Approved Person's own bank account

Shaw (Re), 2017 LNCMFDA 129 at paras. 53-55.

Wang (Re), 2017 LNCMFDA 209 at para. 16.

Pekel (Re) (2021), MFDA File No. 202007 at paras. 39-46, SBA, Tab 10.

55. In this case, the money was repaid and there was no evidence of client loss. Nonetheless, this conduct is a contravention of MFDA Rule 2.1.4. By engaging in conduct that gives rise to an actual or potential conflict of interest and failing to appropriately address that conflict, an Approved Person contravenes MFDA Rule 2.1.4 and undermines the Member's ability to take the necessary steps to protect clients.

Piper (Re), *supra* at paras. 19-20.

Shaw (Re), *supra* at paras. 53-55.

Wang (Re), *supra* at paras. 17-18.

56. As noted above, the Respondent's conduct also contravened MFDA Rule 2.1.1. MFDA Rule 2.1.1 requires that each Member and Approved Person deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. MFDA Rule 2.1.2 has been interpreted and applied in a purposive manner in a wide range of circumstances and is central to the MFDA mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

MFDA Rule 2.1.1

Breckenridge (Re), 2007 LNCMFDA 38 at para. 71.

57. MFDA Hearing Panels have consistently held that where an Approved Person engages in personal financial dealings with a client, he contravenes MFDA Rule 2.1.1.

Rosicki (Re) 2019, MFDA File No. 201826 at para. 63.

Wang (Re), *supra*.

58. Accordingly, the Respondent breached MFDA Rules 2.1.4 and 2.1.1 by borrowing and lending money to clients and by depositing client funds into his personal account.

Conduct Unbecoming

59. The Respondent accepted $9,000 and $5,900 in cash from a client, deposited the money into the Respondent's personal bank account, and then immediately returned the monies to the client by cheque. The Respondent's actions were deliberately designed to deceive the bank by inflating the client's bank account balance so the client would appear to meet the bank's requirements to secure a mortgage. The Respondent's dishonest and deceitful conduct is a clear contravention of the MFDA Standard of Conduct prescribed by Rule 2.1.1.

Avoiding Large Cash Transaction Reporting Requirements

60. The Respondent admits that he took $20,000 in cash that he received from a client as a loan and deposited the cash in three separate transactions of less than $10,000 each. At all material times, Approved Persons of the Member were required to adhere to a Code of Conduct, which, among other things, required its Approved Persons to know and comply with all policies designed to detect and deter money laundering. One of these policies was that all large cash transactions of $10,000 or more be reported to the FINTRAC.

61. The Respondent deliberately evaded the FINTRAC reporting requirements by depositing $20,000 cash in three smaller amounts. Again, the Respondent's dishonest and deceitful conduct is a clear contravention of the MFDA Standard of Conduct prescribed by Rule 2.1.1.

62. The Respondent defended his misconduct by explaining that by engaging in these transactions, he and his friends were simply helping each other. He argued that in Bangladesh, his country of origin it was common for friends to help each other with a big purchase like a home. While it is likely a cultural practice in Bangladesh to help one's friends, as it is in many parts of the world, the Hearing Panel rejects the suggestion that dishonest and deceitful conduct is a cultural practice in Bangladesh and therefore should be acceptable conduct in Canada. Transparency International's 2020 Corruption Perception Index ranks Bangladesh 26 out of 180 countries. The public sectors conducted by the Government are the most corrupted sectors of the country.[1]

63. The Respondent also stated he was not fully aware of his role and responsibilities. Again, it was not necessary to read the MFDA Rules to know that dishonesty and deceit are contrary to those Rules. If the Respondent had questions about his role and responsibilities, he should have asked his manager.

Making false or misleading statements to the Member

64. The Respondent admitted that when he was interviewed by the Member about his misconduct that is the subject of this proceeding, the Respondent gave a false or misleading answer to the Member and therefore contravened MFDA Rule 2.1.1.

65. Members rely on their Approved Persons to be honest with them. By giving the Member a false or misleading answer, the Respondent hindered the Member's ability to fulfil its supervisory role and ensure the handling of its business was following MFDA Rules.

c) Mitigating Factors

66. We considered the following mitigating factors:

a) Investors did not suffer any financial harm because of the Respondent's misconduct,

[1] Corruption in Bangladesh has been a continuing problem. According to all major ranking institutions, Bangladesh routinely finds itself among the most corrupt countries in the world.

b) By admitting his misconduct, the Respondent acknowledges the seriousness of his actions,

c) The Respondent saved the MFDA time and resources by entering in the Settlement Agreement, and

d) The Respondent has not been the subject of any prior MFDA disciplinary proceedings.

d) Costs

67. The costs award is appropriate and consistent with previous MFDA decisions.

VI. CONCLUSION

68. We are satisfied that the proposed sanctions, including the five-year prohibition of the Respondent's authority to conduct securities related business, the $20,000 fine and $5,000 in costs will serve as a specific deterrence to the Respondent and a general deterrence to others in the industry who may contemplate engaging in similar misconduct in the future.

69. Staff provided four MFDA decisions which addressed similar misconduct: *Wang (Re)*, 2017 LNCMFDA 209 at para. 16, *Alam (Re)*, 2020 LNCMFDA 98, *Piper (Re)* 2018 LNCMFDA 31 at para. 12 and *Shaw (*Re*)*, 2017 LNCMFDA 129.

70. Based on a review of these cases and taking into consideration the factors discussed above we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

71. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against the Respondent.

DATED this 10th day of June 2021.

"Emily Cole"

Emily Cole
Chair

"Edward Jackson"

Edward Jackson
Industry Representative

"Selwyn Kossuth"

Selwyn Kossuth
Industry Representative

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