



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: Binni Rajpal

Heard: March 19, 2015 in Toronto, Ontario
Reasons for Decision: April 9, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney	Chair
Linda J. Anderson	Industry Representative
David W. Kerr	Industry Representative

Appearances:

David Halasz)	For the Mutual Fund Dealers Association of
)	Canada
)	
Binni Rajpal)	In Person
)	
)	

BACKGROUND

1. We were constituted as a Hearing Panel of the Central Regional Council of the MFDA to consider a Settlement Agreement dated March 14, 2015¹ between the MFDA and the Respondent, Binni Rajpal, (the “Respondent”), which had been published but not within the 10 days notice required by the MFDA Rules.

2. The parties brought a joint motion for an order abridging the time requirement of the MFDA. The Hearing Panel made the order as requested.²

3. The Hearing Panel ordered that the proceedings be moved *in camera*.³

4. The Hearing Panel then considered the Settlement Agreement and heard submissions from Counsel on why the Settlement Agreement was reasonable and appropriate. The Hearing Panel retired to consider whether or not to accept the Settlement Agreement. The Hearing Panel accepted the Settlement Agreement and signed an Order dated March 19, 2015 which provides, in summary:

- a) that the Respondent pay a fine of \$5,000 payable in equal monthly instalments of \$500 for 10 months from April 20, 2015;
- b) costs of \$2,500 and a three-month suspension from conducting any securities related business while in the employ of an MFDA Member;

5. The Chair said that brief reasons for the Hearing Panel’s decision would follow. These are those reasons.

¹ Exhibit 3

² MFDA Rules of Procedure 1.3, 1.5 and 2.2

³ MFDA Rules of Procedure 15.2.2

CONTRAVENTIONS

6. The Respondent admits that between July 2010 and November 2010, he referred at least two clients to a company that sold mortgage investment products and received \$2,500 in referral fees for doing so, thereby participating in a referral arrangement to which the Member was not a party and which did not otherwise comply with sections 13.7 and 13.8 of National Instrument 31-103.

THE MATERIAL FACTS

7. The Respondent was registered as a mutual fund salesperson in Ontario with Global Maxfin Investments Inc. (“Global”) between November 4, 2004 and June 8, 2012, at which time Global terminated the Respondent for the matters described herein.

8. The Respondent is currently not registered in the securities industry in any capacity.

9. In July or August 2010, the Respondent attended a Waterview Capital Corp. (“Waterview”) seminar where the terms of the Waterview investment were presented. The Respondent was told that he would be paid a fee for referring investors to Waterview.

10. The Respondent:

- a) advised at least two clients about the investment in Waterview;
- b) provided the clients with contact information of the Waterview representative; and
- c) received from Waterview referral fees totalling \$2,500, pertaining to two clients he referred to Waterview who purchased investments.

11. During the material time, Global was party to a referral arrangement with Waterview, pursuant to which Waterview was to pay directly to Global a referral fee based on the purchases of the mortgage security offered by Waterview to the clients of Global.

12. The Respondent did not disclose to Global that he was making referrals in respect of Waterview, and he did not refer the two clients to Waterview pursuant to the referral arrangement between Global and Waterview. The referral fees that Waterview paid the Respondent went directly to the Respondent, and were not processed for the account or through the facilities of Global.

13. During the material time, Global had written policies and procedures that required its Approved Persons to comply with all MFDA Rules and requirements and prohibited its Approved Persons from, among other things, entering into a referral arrangement unless Global approved of and was a party to the referral arrangement.

14. Global also circulated to all its Approved Persons a compliance bulletin dated March 9, 2010 prohibiting the participation by its Approved Persons in referral agreements unless, among other things, the referral arrangement flowed through Global.

SUBMISSIONS OF COUNSEL

15. Counsel referred to National Instrument 31-103 which prohibits a registrant from participating in a referral arrangement except in certain limited conditions. He said these provisions allow a Member properly to control, monitor and train its Approved Persons.

16. Counsel urged the Hearing Panel to accept the Settlement Agreement in the public interest. He stressed, in particular, the importance of deterrence and disgorgement of any earnings by an Approved Person from his misconduct.

17. He referred the Hearing Panel to four cases involving “off book” referrals, like the one with which we dealt here, to assist the Hearing Panel in reaching its decision.⁴

⁴ *Disenhouse (Re)*, [2010] Hearing Panel of the Central Regional Council, File No. 200927, Hearing Panel Decision dated July 8, 2010; *Cormylo (Re)*, Hearing Panel of the Prairie Regional Council, File No. 201323, Hearing Panel Decision dated August 12, 2014; *Cavalli (Re)*, [2013] Hearing Panel of the Prairie Regional Council, File No. 201259, Hearing Panel Decision dated November 6, 2013; *Andrews (Re)*, [2014] Hearing Panel of the Central Regional Council, File No. 201324, Hearing Panel Decision dated May 6, 2014.

ANALYSIS

18. The Hearing Panel is well aware of the fact that it may either only accept or reject the Settlement Agreement.

19. It is also aware that it should not interfere in a negotiated settlement so long as the penalties are within a reasonable range of appropriateness having regard to the conduct of the Respondent.

20. The members of the Hearing Panel have read the four cases referred to by Counsel. They are “off book” cases but beyond that have virtually no relevance to the situation in this case. Previous decisions of hearing panels which involve settlement agreements are of little or no precedential value. This is not surprising as there are numerous facts, accommodations and considerations which go into a settlement agreement. A hearing panel cannot know of all of these.

21. The Respondent breached sections 13.7 and 13.8 of National Instrument 31-103. Indeed, the members of the Hearing Panel are astonished that the Respondent would risk his registration for such a small amount of money. Nevertheless, he must be punished to deter him and others from engaging in such behaviour. In this connection, we note that the suggested minimum penalty in the non-mandatory Guidelines issued by the MFDA is \$10,000. The fine asked for here is \$5,000. This seems appropriate as it means that the Respondent will, when the fine is paid in full, disgorge double the amount of his ill-gotten gains.

22. The Hearing Panel considered the following mitigating factors:

- a) The Respondent has not previously been the subject of MFDA disciplinary proceedings.

- b) The Respondent has cooperated with Staff during its investigation. Moreover, by agreeing to the Settlement Agreement he has saved the necessity of a hearing with its attendant costs.
- c) The Respondent has already paid the \$2,500 in costs.
- d) There were no complaints against the Respondent or any evidence of investor loss.

DECISION

23. The Hearing Panel unanimously approves the Settlement Agreement for the reasons above.

DATED this 9th day of April, 2015.

“Terrance A. Sweeney”

Terrance A. Sweeney
Chair

“Linda J. Anderson”

Linda J. Anderson
Industry Representative

“David W. Kerr”

David W. Kerr
Industry Representative

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