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: Barry James Raymer

Heard: July 20, 2009
Toronto, Ontario

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Fred Kaufman, C.M., Q.C.	Chair
Petra Sandori	Industry Representative
Robert White	Industry Representative

Appearances:

Michelle Pong	)	For the Mutual Fund Dealers Association of Canada
	)	
Scott Kugler	)	For the Respondent, Barry Raymer
	)	

1. At the conclusion of a hearing held in Toronto, Ontario, on July 20, 2009, the hearing panel approved a Settlement Agreement entered into by the parties, which, *inter alia*, provided as follows:

> The Respondent [Mr. Raymer] agrees to the following terms of settlement:
>
> (a) the Respondent shall pay a fine in the amount of $5,000.00, pursuant to section 24.1.1(b) of 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 in association with, any MFDA Member, pursuant to section 24.1.1(e) of By-law No. 1;
>
> (c) the Respondent shall not pay any costs of the MFDA's investigation or of this proceeding.

The Facts

2. The facts, as agreed upon by the parties, are as follows:

Registration History

From June 1992 to May 31, 2001, the Respondent was registered in Ontario as a mutual fund salesperson with AFP Wealth Management Inc. ("AFP"). AFP amalgamated with IPC Investment Corporation ("IPC") on June 1, 2001 and the combined entity was thereafter known as IPC. The Respondent has been registered in Ontario with IPC as a mutual fund salesperson since June 1, 2001 and as a branch manager since December 9, 2003.

The Respondent has never previously been the subject of a disciplinary proceeding by the MFDA. There were no client complaints to the MFDA about the Respondent prior to the client complaints that were made in respect of this matter.

IPC has been a Member of the MFDA since March 8, 2002.

Jewal and PPS

Jewal International Incorporated ("Jewal") sold, serviced and rented home healthcare products for the elderly and disabled.

Permanent Power Solutions ("PPS") sold and installed wind power generators and solar power systems.

CP was the President and a shareholder of Jewal and PPS. CP's son, DP, was the CEO of Jewal. CP was a client of IPC whose account was serviced by the Respondent.

In December 2003, CP began promoting Jewal to the Respondent and solicited the Respondent to purchase shares in the company.

In March 2004, CP met with the Respondent and the Respondent's spouse, ER. At the meeting, it was agreed that the Respondent's spouse would administer loans for Jewal and would be paid a fee equal to 3% of each loan amount for doing so. Later on, the same arrangement was put in place for loans for PPS. The Respondent did not disclose the arrangements to IPC on either occasion.

Lenders for Jewal and PPS were provided with a promissory note due in one year at a rate of 12%. The Respondent's spouse's job involved coordinating the execution of the promissory notes, delivering the lenders' cheques and a copy of the promissory notes signed by the lenders to DP, and delivering the promissory notes that were usually signed by CP or DP and the post-dated interest cheques issued by Jewal and PPS to the lenders.

For the purposes of this proceeding, the parties agree that the promissory notes issued by Jewal and PPS constituted a security within the meaning in the *Securities Act* (Ontario). The Respondent's spouse was not registered to advise or trade in securities in Ontario or in any other jurisdiction.

In April 2004, the Respondent became a shareholder of Jewal (as opposed to a noteholder).

Shortly thereafter, the Respondent met with CP and a group of other prospective lenders who CP referred to as his "network". In the presence of the Respondent, CP promoted

Jewal and told everyone that there was a very good chance that Jewal would be sold in the very near future for a considerable profit. During the meeting, CP also said that Jewal intended to issue promissory notes and would use the money it borrowed to deal with a cash flow problem that resulted from the fact that customers only paid 25% of the purchase price up front and the government, through the Assistive Devices Program, paid the other 75% of the purchase price approximately four to six months later.

CP held upwards of twenty meetings with his "network" and with other people. He provided verbal reports to those in attendance, which included the Respondent and tried to solicit share purchases and loans from them.

In late 2004 or early 2005, CP asked the Respondent to become an "advisor" to Jewal. The Respondent agreed to do so.

In February 2005, the Respondent became a shareholder of PPS.

In July 2006, the Respondent learned from Jewal's accountants that Jewal's profit in 2005 had been $40,000, and not $400,000 as had been represented by Jewal on its financial statements.

On August 31, 2006 and September 14, 2006, the Chairperson of the Board of Directors of Jewal met with the Oxford Community Police about possible fraudulent activity involving Jewal. The Oxford Community Police turned the investigation over to the Ontario Provincial Police. The Ontario Provincial Police investigated Jewal, PPS and CP and charges were ultimately laid against CP.

On September 11, 2006, IPC was contacted by MI. MI's grandparents were clients of IPC. The Respondent was responsible for servicing their account. MI's grandparents had invested $25,000 in Jewal after speaking with the Respondent. MI expressed concerns to IPC about the legitimacy of the investment.

On or about September 12, 2006, IPC contacted the Respondent about his involvement with Jewal. The Respondent disclosed to IPC his involvement in Jewal and that his spouse had administered loans on behalf of Jewal. IPC placed the Respondent under additional supervision.

On September 26, 2006, the Respondent further disclosed to IPC that his spouse had also administered loans on behalf of PPS.

The Respondent organized a meeting for shareholders and noteholders of Jewal which was held on May 3, 2007. He arranged for a local lawyer to attend the meeting to discuss the possibility of suing CP.

The Respondent states that he has personally lost over $50,000.00 as a result of his own investment in Jewal and PPS.

Dealings with Clients

On October 5, 2004, the Respondent told clients HW and LW about Jewal. That same day, HW and LW loaned $25,000 to Jewal and a promissory note repayable in 12 months that paid interest at a rate of 12% per annum was delivered by the Respondent's spouse to HW and LW. On October 5, 2005, after speaking with the Respondent, HW and LW renewed the promissory note for an additional 12 months on the same terms.

In early February 2006, the Respondent told clients GF and KF about Jewal. On February 14, 2006, GF and KF loaned $34,000 to Jewal and a promissory note repayable in 12 months that paid annual interest at 12% was delivered by the Respondent's spouse to GF and KF.

Between October 5, 2004 and February 14, 2006, seven IPC clients loaned money to Jewal or PPS after being told about the companies by the Respondent. One of these seven IPC clients was VR, the Respondent's own mother. Each of them was directed by the Respondent to the Respondent's spouse, who administered the paperwork for the loans:

			Amount	
	Name of Client	**IPC Client**	**Jewal**	**PPS**
1	SD & AD	Yes	$25,000	
2	KF & GF	Yes	$34,000	
3	RH	Yes		$25,000
4	BM & PM	Yes	$10,000	
5	VR	Yes	$50,000	$25,000
6	HS & GS	Yes		$25,000
7	HW & LW	Yes	$25,000	
	Total		$144,000	$75,000

The Jewal and PPS promissory notes were not investments known to or approved for sale by IPC. The Respondent did not seek or obtain approval from IPC to recommend or facilitate loans to Jewal or PPS.

The "Know-Your-Client" ("KYC") forms at IPC for RH, BM & PM, and HW & LW indicated that their risk tolerance was low. The KYC forms for SD & AD, KF & GF, and HS & GS indicated that their risk tolerance was medium. The Jewal and PPS promissory notes were high risk investments.

The Respondent was a shareholder of both Jewal and PPS and states that he disclosed such to any clients with whom he discussed Jewal or PPS.

Between October 5, 2004 and September 12, 2006, the Respondent did not disclose to IPC that:

(a) he was telling clients about Jewal and PPS, and directing them to contact his spouse to inquire further should they wish to lend money to Jewal or PPS; and

(b) his spouse was being paid a commission in respect of any such loan.

In total, between October 5, 2004 and February 14, 2006, 26 individuals, including the seven IPC clients referred to in paragraph 30 above, loaned $1,528,000 to Jewal and PPS and the Respondent's spouse received $45,840 for administering the loans, $6,570 of which related to the seven IPC clients.

To date, no clients who invested in or loaned money to Jewal and PPS have received any payments on account of principal or interest or have been compensated for their losses.

Contraventions

3. Based on these facts, the Respondent admitted that, between October 5, 2004 and February 14, 2006, he "engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by recommending and facilitating investments by clients in Jewal and PPS, contrary to MFDA Rules 1.1.1. and 2.1.1."

Discussion

4. It is generally agreed that hearing panels should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness given the conduct of the Respondent. (See, for instance, *Re Rodney Jacobson*, June 11, 2007, Prairie Regional Council, No. 200712; *Re Clark*, [1999] I.D.A.C.D. No. 40; and *Re Milewski*, [1999] I.D.A.C.D. No. 17.)

5. The appropriateness of the penalty depends on a number of factors:

(a) The seriousness of the allegations proved against the Respondent;

(b) The Respondent's past conduct, including prior sanctions;

(c) The Respondent's experience and level of activity in the capital markets;

(d) Whether the Respondent recognizes the seriousness of the improper activity;

(e) The harm suffered by investors as a result of the Respondent's activities;

(f) The benefits received by the Respondent as a result of the improper activity;

(g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

(h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

(i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;

(j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

(k) Previous decisions made in similar circumstances.

(See, for instance, *Re Lamoureux*, [2002] A.S.C.D. No. 125; *Re Robert Roy Parkinson*, 2005, MFDA File NO. 200501; AND *Re Stephan Headley*, 2006, MFDA File No. 200509.)

6. While the Respondent's misconduct was serious, it is clear that he now recognizes the gravity of the improper activity. He did not personally benefit from the misconduct (although his wife did), and these were the first client complaints in his career as an Approved Person for a MFDA Member firm – a career that has now come to an end. He has co-operated with the investigators, and by reaching the settlement he as avoided a hearing that might well have been lengthy, costly, and inconvenient to persons who have already suffered greatly by having followed his recommendations.

Disposition

7. Given the circumstances outlined above, we are unanimously of the view that the parties have demonstrated that the terms of the settlement meet the applicable criteria, and we therefore accepted the Settlement Agreement reached by the parties on the terms proposed by the Agreement.

Dated this 24th day of July, 2009.

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

"Petra Sandori"
Petra Sandori, Industry Representative

"Robert White"
Robert White, Industry Representative

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