



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: Steven Jules Rethy

Heard: October 15, 2020 by electronic hearing in Halifax, Nova Scotia
Reasons for Decision: December 7, 2020

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, QC
Darrell Bing
Joshua Martin

Chair
Industry Representative
Industry Representative

Appearances:

Lyla Simon)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
)	
Ronald Chisholm)	Counsel for the Respondent
)	
)	
Steven Jules Rethy)	Respondent
)	

I. BACKGROUND

1. By Notice of Hearing, dated the 15th day of April, 2020, the Mutual Fund Dealers Association of Canada (“MFDA”) made the following Allegation against Steven Jules Rethy (“Respondent”).

Allegation #1: In or about June 2010, the Respondent concealed from the Member that he had recommended that two clients borrow monies to invest, thereby failing to abide by the terms and conditions regarding leveraging imposed on his registration and misleading the Member in response to supervisory inquiries, contrary to MFDA Rule 2.1.1.

2. The Notice of Hearing was served on the Respondent, as shown by the Affidavit of Terri Ash, sworn on the 5th day of May 2020, and the exhibits attached thereto.

3. The Respondent served and filed a Reply on the 12th day of June, 2020.

4. On June 16, 2020, the first appearance was held via teleconference before one public representative of a Regional Council acting on behalf of a Hearing Panel of the Atlantic Regional Council of the MFDA, pursuant to section 19.13(b) of MFDA By-law No. 1.

5. After hearing and considering the submissions of counsel for the Respondent and counsel for Staff of the MFDA (“Staff”) with respect to scheduling and other procedural matters, it was ordered, *inter alia*, that the Hearing on the Merits would proceed in Halifax, Nova Scotia on October 14-15, 2020 at 10:00 a.m. (Atlantic) each day.

6. On June 16, 2020, the MFDA Director of Hearings issued a News Release advising the public of the date and time of the Hearing on the Merits “at a venue to be determined and announced accordingly in Halifax, Nova Scotia.” This News Release provided the public with access to the Notice of Hearing.

7. On October 14, 2020, just prior to the formal commencement of the Hearing on the Merits, the Hearing Panel was advised that the parties were working towards an agreement in principle.

8. Accordingly, the Hearing on the Merits was rescheduled to proceed on October 15, 2020, at 10:00 a.m. The public was so notified by means of a News Release.

9. On October 15, 2020, prior to the formal commencement of proceedings, the Hearing Panel was presented with an executed Settlement Agreement. This Settlement Agreement had been prepared in accordance with section 24.4 of MFDA By-law No. 1, with the exception that no Notice of Settlement Hearing had been prepared in accordance with Rule 15.2(1) of the MFDA *Rules of Procedure*.

10. Rule 15.2(1) provides as follows:

“15.2 Notice and Public Access

(1) Except where a settlement is reached after the commencement of the hearing of a proceeding on its merits, a Hearing Panel shall not consider a Settlement Agreement unless at least 10 days’ notice of the settlement hearing has been given by the Corporation in the same manner as a notice of penalty pursuant to section 24.5 (Publication of Notice and Penalties) of MFDA By-law No. 1 specifying:

- (a) the date, time and place of the settlement hearing; and
- (b) the purpose of the settlement hearing with sufficient information to identify the Member or person involved and the general nature of the allegations which are the subject matter of the settlement.”

11. Rules 1.3(1) and 1.5(1)(b) of the Rules of Procedure provide as follows:

“1.3 General Principles

(1) These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness.

1.5 General Powers of a Panel

- (1) A Panel may:
 - (b) waive or vary any of these Rules at any time, on such terms as it considers appropriate.”

12. The Hearing Panel decided to proceed and consider the Settlement Agreement. Our reasoning for doing so is as follows:

13. On April 15, 2020, the MFDA had issued a public Notice of Hearing detailing the Allegation against the Respondent.

14. On June 16, 2020, the Hearing Panel had issued an Order which gave notice of the date, time and general location of the Hearing on the Merits. These details were contained in a News Release issued the same day by the MFDA.

15. Consequently, at least 10 days' notice had been provided, identifying the person involved, the general nature of the Allegation which was the subject matter of the Settlement Hearing, as well as the date, time and place where a consideration of this Allegation would occur.

16. In our view, under all the circumstances, it was appropriate to waive certain of the provisions of Rule 15.2 of the Rules of Procedure so that the Settlement Agreement could be considered by the Hearing Panel on the second day set for the Hearing on the Merits.

17. This approach is consistent with that adopted by previous Hearing Panels in similar, but not identical, circumstances, in the cases of Melvin Robert Penney, Ben Alden Kaley, Adrian Samuel Leemhuis and Jennifer Lynn Killins.

Re: *Melvin Robert Penney (Re)*, [2009] MFDA File No. 200831.

Re: *Ben Alden Kaley (Re)*, [2010] MFDA File No. 200923.

Re: *Adrian Samuel Leemhuis (Re)*, [2011] MFDA File No.200832.

Re: *Jennifer Lynn Killins (Re)*, {2012] MFDA File No. 201109.

18. Due to the existence of COVID-19, and with the consent of the parties, the Settlement Hearing was conducted by way of electronic hearing on October 15, 2020.

19. At the commencement of the Settlement Hearing, the Hearing Panel granted the joint request of the parties to move the proceedings "in camera" so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the *MFDA Rules of Procedure*.

20. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions both as to the applicable law and as to why this particular Settlement

Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

21. The Hearing Panel had some concerns with certain paragraphs of the Settlement Agreement. The Hearing Panel expressed those concerns to the parties. The parties requested an opportunity to confer. This opportunity was provided by the Hearing Panel. After consultation between themselves, the parties jointly proffered certain amended paragraphs to the Hearing Panel.

22. After carefully considering the Settlement Agreement, as amended, and the submissions of the parties, the Hearing Panel unanimously accepted the amended Settlement Agreement. We made an Order to this effect on October 15, 2020. At that time, we advised the parties that written Reasons for Decision would follow. These are those Reasons:

II. THE SETTLEMENT AGREEMENT

23. The salient portions of the amended Settlement Agreement are as follows:

“II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part IX) or any civil

or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. Since January 20, 2004, the Respondent has been registered in Alberta, New Brunswick, Newfoundland and Labrador, Ontario, and Prince Edward Island as a mutual fund salesperson (now known as a dealing representative) with Keybase Financial Group Inc. (the “**Member**”), a Member of the MFDA.

7. At all material times, the Respondent carried on business from a location in Dartmouth, Nova Scotia.

8. Previously, the Respondent was registered in the securities industry since 1990, as follows:

- October 2001 to January 16, 2004 – Cartier Partners Financial Services Inc.
- December 8, 1995 to October 2001 – Heritage Financial Services Ltd.
- May 17, 1990 to December 5, 1995 – Investors Group Financial Services Inc.

Contravention #1 - Concealing Information from the Member

9. In or about the late 1990s, the Respondent started servicing the mutual fund accounts of clients CM and DM.

10. In the ensuing years, the Respondent recommended to clients CM and DM that they borrow monies to invest in mutual funds, which the clients engaged in on three occasions, namely, in 2004, 2005, and 2007.

11. In January 2009, the Member issued revised leveraging guidelines, including more restrictive requirements regarding a client’s loan to net worth ratio, and total debt servicing ratio.

12. Effective November 30, 2009, the Nova Scotia Securities Commission (the “**Commission**”) imposed terms and conditions on the Respondent’s registration such that the Respondent could only recommend leverage to a client where:

- the recommended leverage would not cause the client’s leverage-to-liquid-net-worth ratio to exceed 30%;
- the accuracy of the client’s income and net worth was verified by the client in writing;
- the assessment of the client’s income and net worth was made on the basis of true and accurate information received by the client and approved in writing by the client; and

- the Know-Your-Client information or New Account Application form indicated that the client had:
 - risk tolerance of medium-high or high;
 - liquidity or time horizon of 11 years or more;
 - an age of 60 years or younger;
 - annual income of at least \$50,000; and
 - investment knowledge of good or sophisticated.

13. On March 9, 2010, the Respondent entered into a settlement agreement with Staff of the Commission (“**NSSC Settlement Agreement**”) wherein he admitted to (regarding one client) keeping blank signed forms on file and signing the client’s name on a letter of direction. In the NSSC Settlement Agreement, he agreed to be reprimanded, and to pay an administrative penalty in the amount of \$22,000 and costs in the amount of \$500.

14. On March 30, 2010, the Commission approved the NSSC Settlement Agreement, including the fine and costs amounts, and ordered the monies to be paid forthwith.

15. On or about June 3, 2010, the Respondent met with clients CM and DM and recommended that they borrow more monies to invest. Specifically, the Respondent recommended that clients CM and DM increase their bank homeowner line of credit to the maximum amount available and use those funds to invest \$100,000 in mutual funds for their joint non-registered account. At the time of this recommendation, client CM was 65 years old and client DM was 53 years old.

16. On or about June 10, 2010, the bank issued a draft in the amount of \$100,000 to clients CM and DM. The clients then provided the monies to the Respondent to invest in mutual funds for their account.

17. Also on June 10, 2010, the Respondent sought ‘pre-approval’ from the Member for the mutual fund purchase by clients CM and DM, in order to ensure that there would not be any delays in processing the transaction. At this time, the Member’s head office compliance personnel questioned the Respondent regarding the proposed transaction for clients CM and DM, including whether the source of the funds was leveraged monies.

18. The Respondent advised the Member that the source of the funds was not leveraged monies, thus misleading the Member. The Respondent knew that the Member would not otherwise have authorized the transaction for clients CM and DM.

19. On or about June 11, 2010, clients CM and DM signed the necessary documents in order to complete the transaction, and the Respondent submitted the purchases to the Member for processing. The transaction was subsequently completed for the account of clients CM and DM.

Action Taken by the Member

20. In or about February 2018, the Member became aware that the source of clients CM and DM's funds for investment had been leveraged monies, contrary to what the Respondent had advised the Member.

21. In or about December 2018, the Member paid compensation of \$35,741 to clients CM and DM for losses incurred in relation to the investment recommendation made by the Respondent.

22. The Member subsequently deducted \$35,741 from the Respondent's commissions over a period of five months in 2019.

23. Additionally, in connection with the events described herein, the Member fined the Respondent \$1,500.

Additional Factors

24. There have been no other client complaints regarding this matter to the Member or to the MFDA.

25. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

26. The Respondent states that since 2010, he has not recommended or implemented any new leveraged mutual fund transactions for clients.

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

V. CONTRAVENTIONS

28. In or about June 2010, the Respondent concealed from the Member that he had recommended that two clients borrow monies to invest, thus failing to abide by the terms and conditions regarding leveraging imposed on his registration and misleading the Member in response to its supervisory inquiries, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

29. The Respondent agrees to the following terms of settlement:

- a) The Respondent shall be suspended for a period of five months from conducting securities related business in any capacity while in the

employ of or associated with any MFDA Member commencing from the date of the final Order herein, pursuant to s. 24.1.1(c) of By-law No. 1;

- b) The Respondent shall be permanently prohibited from engaging in any new leveraging activities with clients, including recommending or applying for additional investment loans for clients, pursuant to s. 24.1.1(f) of MFDA By-law No. 1; which prohibition does not otherwise limit the servicing of clients with existing leverage.
- c) The Respondent shall pay a fine in the amount of \$10,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- d) The Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- e) The Respondent shall in future comply with MFDA Rule 2.1.1; and
- f) The Respondent shall attend in person (via videoconference) at the Settlement Hearing.”

III. THE LAW

24. In the Settlement Agreement, the Respondent admitted that he acted contrary to MFDA Rule 2.1.1.

25. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to all registrants in the mutual fund industry. The Rule requires that Members and Approved Persons 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. This Rule is central to the MFDA’s mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

IV. PRINCIPLES REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS

26. In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in

a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

27. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

- i. Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- ii. Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- iii. Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- iv. Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- v. Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- vi. Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
- vii. Whether the Settlement Agreement will foster confidence in the regulatory process itself.

Jacobson (Re), 2007 LNCMFDA 27.

28. Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. These include:

- a) The seriousness of the allegations proved against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience in the capital markets;
- d) The level of the Respondent's activity in the capital markets;
- e) Whether the Respondent recognizes the seriousness of the improper activity;
- f) The harm suffered by investors as a result of the Respondent's activities;

- g) The benefits received by the Respondent as a result of the improper activity;
- h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- j) 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;
- k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- l) Previous decisions made in similar circumstances.

Headley (Re), 2006 LNCMFDA 3 at para.85.

In the Matter of Robert Roy Parkinson (2005), Hearing Panel of the Ontario Regional Council, Decision and Reasons dated April 29, 2005, MFDA File No. 200501, at page 22.

V. CONSIDERATIONS IN THE PRESENT CASE

29. Staff made very detailed written and oral submissions as to how these principles applied to the case before us. These submissions included the following:

(a) Seriousness of the Activity

30. We agree with the submissions of Staff that the Respondent's conduct, as outlined in the Settlement Agreement, undermined:

- i. the best interests of the clients;
- ii. the leveraging guidelines and supervisory processes of the Member; and
- iii. the terms and conditions that had been imposed on the Respondent's registration by the Nova Scotia Securities Commission only seven months before, in November of 2009.

31. The MFDA Sanction Guidelines state, in part, as follows:

“Attempts by the Respondent to conceal misconduct or to lull inactivity, mislead, deceive or intimidate an investor, the Member or regulatory authorities, should be considered an aggravating factor.”¹

32. While we recognize that these Guidelines are not mandatory or binding on us, they do provide a basis upon which a Hearing Panel can exercise its discretion in a fair and consistent manner.

33. In the case before us, the Respondent admitted that he misled the Member when questioned about the source of the funds as he knew that if he told the Member that this was a leveraged transaction, the Member would not have authorized it for the particular clients in question. This type of conduct is clearly an aggravating factor.

(b) Respondent’s Experience and Past Conduct, including Prior Sanctions

34. The Respondent is a very experienced registrant, having been registered in the securities industry since May of 1990, a period of some 30 years.

35. The Sanction Guidelines provide that, in determining sanctions, Hearing Panels should consider a Respondent’s relevant disciplinary history, including past misconduct similar to that at issue, or past misconduct that, while unrelated to the misconduct at issue, demonstrate prior disregard for regulatory requirements and investor protection. (Ref: Sanction Guidelines, page 4)

36. While the Respondent has not previously been the subject of MFDA disciplinary proceedings, as outlined in paragraphs 12 to 14 of the Settlement Agreement, he was the subject of disciplinary proceedings by the Nova Scotia Securities Commission in 2010, as well as having terms and conditions imposed on his registration in 2009.

(c) Respondent’s Recognition of the Seriousness of the Misconduct

37. By entering into the Settlement Agreement, the Respondent has both admitted his misconduct and saved the MFDA the time, resources and expenses associated with otherwise

¹ Ref: MFDA Sanctions Guidelines, published November 15, 2018, page 3.

needing to conduct a full hearing of the allegations. We were also advised that he co-operated fully with Staff throughout this matter.

(d) Harm Suffered by Investors

38. In or about December 2018, the Member paid compensation of \$35,751.00 to the two clients for losses incurred in relation to the investment recommendations made by the Respondent. This amount was subsequently deducted from the Respondent's commissions over a period of five months in 2019. The Member also fined the Respondent \$1,500.00 in connection with the events in question.

39. The Hearing Panel was advised that there have been no other client complaints to the Member or the MFDA regarding this matter.

(e) Benefits Received by the Respondent as a Result of the Misconduct

40. We agree with the submission of Staff that it is an aggravating factor that the Respondent acted on an inherent financial incentive to obtain the benefits of a larger commission by implementing a leveraging strategy rather than confining his recommendation to an amount that the clients in question might have afforded without using borrowed funds.

(f) Deterrence (Specific and General)

41. We agree that the amended Settlement Agreement will serve as a general caution and reminder to the industry and the public regarding potential outcomes for engaging in the admitted misconduct.

42. We also believe that the proposed sanctions will serve as a notice to the Respondent that Approved Persons must uphold the required standards of conduct and, more specifically, must abide by any terms and conditions imposed on their registration and act forthrightly and truthfully with their Members at all times.

(g) Previous Decisions Made in Similar Cases

43. Staff provided the Hearing Panel with an extremely detailed chart seeking to show that the proposed resolution is within the reasonable range of appropriateness with regards to other decisions made by MFDA Hearing Panels in similar circumstances. In her oral presentation, Staff Counsel compared each of its cases in detail to the present case, outlining the similarities as well as the disparities.

44. The following cases were discussed:

- (a) *Poon (Re)*, 2018 CanLII 103284, Reasons for Decision of the MFDA Central Regional Council dated October 19, 2018.
- (b) *Khanna (Re)*, 2018 CanLII 11789, Reasons for Decision of the MFDA Central Regional Council dated February 27, 2018.
- (c) *White (Re)*, 2017 LNCMFDA 69, Reasons for Decision of the MFDA Atlantic Regional Council dated April 18, 2017.
- (d) *Sullivan (Re)*, 2008 LNCMFDA 12, Reasons for Decision of the MFDA Pacific Regional Council dated August 11, 2008.

VI. DECISION

45. After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

VII. ORDER

46. After accepting the Settlement Agreement, we made the following Order:

- a) The Respondent shall be suspended for a period of five months from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member commencing from the date of the final Order herein, pursuant to s. 24.1.1(c) of By-law No. 1;

- b) The Respondent shall pay a fine in the amount of \$10,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, as follows:
 - i) \$5,000 shall be payable upon the acceptance of the Settlement Agreement; and
 - ii) the balance of the fine (\$5,000) shall be payable by April 15, 2021;
- c) The Respondent shall be permanently prohibited from engaging in any new leveraging activities with clients, including recommending or applying for additional investment loans for clients, pursuant to s. 24.1.1(f) of MFDA By-law No. 1; which prohibition does not otherwise limit the servicing of clients with existing leverage;
- d) The Respondent shall pay costs in the amount of \$5,000.00 upon the acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- e) The Respondent shall in future comply with MFDA Rule 2.1.1; and
- f) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

DATED this 7th day of December, 2020.

“Thomas J. Lockwood”

Thomas J. Lockwood, QC
Chair

“Darrell Bing”

Darrell Bing
Industry Representative

“Joshua Martin”

Joshua Martin
Industry Representative