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: Serge Luc Robichaud

Heard: October 24, 2018 in Moncton, New Brunswick
Decision: October 24, 2018
Reasons for Decision: February 11, 2019

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

R. Scott Peacock	Chair
Patrick Galarneau	Industry Representative
Jason Downey	Industry Representative

Appearances:

Lyla Simon	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Lauren Binhammer	)	Counsel for the Respondent
Serge Luc Robichaud	)	Respondent, in person

Introduction

1. The Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Hearing dated November 15, 2017 which contained four allegations against Serge Luc Robichaud (the "Respondent"). Those allegations were:

> "1. Between about January and April 2015, the Respondent entered into a referral arrangement with a third party, referred at least 11 clients to the third party and received compensation from the third party, all of which occurred outside the facilities of the Member, thereby engaging in conduct contrary to the Members policies and procedures, MFDA Rules 1.1.2, 2.5.1, 2.4.2, and 2.1.1 and sections 13.7 and13.8 of National Instrument 31-103.
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> 2. Between about June 2015 and January 2016, the Respondent provided false or misleading statements to:
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> > i) a Member during the course of the investigation into his conduct thereby interfering with the Member's ability to supervise and investigate the Respondents conduct contrary to MFDA Rule 2.1.1 and
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> > ii) MFDA Staff ("Staff") during the course of its investigation into his conduct, thereby interfering with Staff's ability to conduct its investigation contrary to MFDA Rule 2.1.1 and section 22.1 of MFDA By-law No. 1.
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> 3. In August 2015 the Respondent provided false and misleading responses to a questionnaire from the Member with whom he seeking (sic) to become registered, when he stated that among other things:
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> > i) his mutual fund registration with his previous Member had been terminated in good standing, when it had not; and
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> > ii) he had not ever been terminated based on being accused of violating industry rules or standards of business conduct, when he had;
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> > thereby misleading the Member, and interfering with its ability to conduct due diligence of the proficiency and suitability of an individual seeking to become registered with the Member contrary to MFDA Rule 2.1.1.
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> 4. Between about September 2010 and October 2015, the Respondent obtained and maintained 22 blank or partially complete pre signed account forms in respect to

seven clients, contrary to the Member's policies and procedures and MFDA Rules 1.1.2, 2.5.1 and 2.1.1"

2. By Affidavit of Service from Sofi Vasiliadis, an employee of the MFDA, the affiant swore that Counsel for the Respondent, Mr. Scott Hutchinson of Henin Hutchison LLP, would accept service of the Notice of Hearing. Further, that by email she sent to Scott Hutchinson a copy of the Notice of Hearing in this matter among other documents.

3. The Respondent's Counsel, Mr. Scott Hutchinson and Ben Rogers filed a Reply on behalf of the Respondent dated December 13, 2017 wherein admissions and denials were made as well as statements of no direct knowledge of facts.

4. The First Appearance was held on January 30, 2018 and preliminary matters were disposed of and a Hearing Date of September 24, 2018 was set for Moncton New Brunswick.

5. The Parties to the proceeding communicated through Staff requesting an earlier one day hearing. A new date of August 16, 2018 was agreed upon and set. A news release was issued to that effect by Staff of the MFDA announcing the new date for the consideration of a Settlement Agreement.

Decision

6. The Panel convened and heard submissions from Counsel for the MFDA and the Respondent in support of a joint submission recommending the approval of a Settlement Agreement dated August 14, 2018. The Settlement Agreement set forth the Respondents admissions:

"i) Between January and April 2015, the Respondent entered into referral arrangement with a third party, referred at least 11 clients to the third party and received compensation from the third party, all of which occurred outside the facilities of the Member, thereby engaging in conduct contrary to the Member's policies and procedures, MFDA Rules 1.1.2, 2.5.1, 2.4.2 and 2.1.1 and section 13.7 and 13.8 of National Instrument 31-103;

ii) Between about June 2015 and January 2016, the Respondent provided false or misleading statements to a Member during the course of its investigation into his conduct, thereby interfering with the Member's ability to supervise and investigate

the Respondent's conduct, and to MFDA Staff during the course of its investigation into his conduct, contrary to MFDA Rule 2.1.1; and

iii) Between about September 2010 and August 2015, the Respondent obtained and maintained 22 blank or partially complete pre signed account forms in respect to seven clients, contrary to the Member's policy and procedure and MFDA Rules 1.1.2, 2.5.1 and 2.1.1."

7. Counsel for the MFDA argued for the proposition that in respect to a joint submission of a Settlement Agreement the panel has only two options, to accept or reject the proffered Settlement Agreement. Further that the Panel must afford the proffered Settlement Agreement a significant degree of deference. As authority for this position the Panel was referred to Milewski [1] and Sterling Mutuals Inc. (Re)[2]. In Sterling the Panel wrote citing Milewski:

> "We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "will tend not to alter a penalty that it considers to be in a reasonableness range, taking into account the settlement process and the facts 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."[3]

8. Both Counsels argued that the Panel should not interfere with the Settlement Agreement for a number of reasons. First, was the public interest of encouraging a public and appropriate disposition in an efficient manner. Secondly, that the saving of valuable resources in time and expense was an objective to be supported and encouraged. Thirdly, that in the event of a joint settlement submission there are invariably facts, considerations and factors that are unknown to the decision makers; the settlement, having been negotiated by those in the best position to decide on the content and effect of the Settlement Agreement. There exists reasonable expectation on the part of the Parties that the proffered settlement will be accepted.

9. Although deference is owed to a settlement negotiated in good faith by the Parties to the proceeding; it is not absolute and does not impair a panel's responsibility to consider its provisions upon a critical review of all of the facts, circumstances, precedence and the public interest. This issue was raised in Re: Lemaire[4] :

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[1] Milewski (Re) [1999] IDA CD No.17
[2] Sterling Mutuals Inc. (Re) 2008 LNCMFDA 16
[3] 2 supra, at page 5 para. 37
[4] Re: Lemaire, 2018 IIROC 24 at paras 28 to 30

> "28. Both the general economy of texts governing IIROC and, more broadly, the principles regarding security of the justice system make it very plain that a hearing panel, having taken a matter under advisement, cannot modify the settlement agreement as presented. If such is the case it must reject it.
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> 29. But that is not the case here.
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> 30. The Hearing Panel considers that it had a duty to inform the counsels of "its discomfort", its "concerns" to use the expression in Anthony Cook, immediately following counsel's arguments and before taking the matter under advisement, to avoid a possible rejection of the agreement during deliberations. This flexibility and agility in no way undermine the existing system; to the contrary, they contribute to a healthy administration of justice. They ensure its efficiency. Modulating the agreement so that it can be ratified helps to avoid the risk, if it is rejected by the Hearing Panel during deliberations, of having to start the proceedings over in front of a new panel, from square one."

10. Both Counsels argued that the Panel should consider the absence of a discipline record for the Respondent, his length of time as a registrant and the fact that he lost his position with BMO Investments as a result of the impugned conduct. Counsel also highlighted that the Respondent has had no performance or discipline issues during his employment with the current Member.

11. The Panel considered only the admissions made in the Settlement Agreement dated August 14, 2018, the submissions of Counsel and the cases argued in Counsels submissions and submitted to the Panel for consideration in this proceeding. The Panel is not satisfied that the penalties proposed in the Settlement Agreement were reasonable in consideration of all of the facts. The admissions of the Respondent that he had misled the Member and the MFDA Staff in two acts of providing false information to the Member and MFDA Staff is troubling to the Panel.

12. Participation in a regulated profession where the trust of the investing public and their best interests are paramount requires a higher standard of conduct than some other types of occupations. Conduct that imperils the trust and reliance of the investor attracts significant penalties if not prohibition of participation in the regulated securities market.

13. The Respondent's admitted conduct is at odds with the required principles of integrity and honesty. These factors coupled with the breach of Rules associated with the referral agreements

and blank forms led the Panel to conclude that the proposed settlement is not reasonable on the facts.

14. It is the opinion of the Panel that the period of suspension has more impact on the registrant, particularly when the registrant is an active registrant who has expressed and demonstrated intent to continue in the industry. A suspension has the additional attribute of being a strong factor in general deterrence for likeminded registrants. It is settled law that general and specific deterrence are appropriate considerations for an administrative law panel to consider. Reliance on significant monetary penalties alone can be perceived as a cost of doing business and not as effective as balancing monetary penalties with suspensions and other remedies.

15. The Panel expressed its concerns to the Parties upon reconvening the hearing and its intention to reject the Settlement Agreement. The Parties requested a recess and subsequently made additional submissions and arguments. The Parties requested an adjournment before the Panel made its formal disposition. An adjournment was granted to a date to be set.

16. This matter came back before the Panel on October 24, 2018 at Moncton, New Brunswick. The Parties submitted an amended Settlement Agreement dated October 23, 2018 for the Panel's consideration.

17. The amended Settlement Agreement contained the same admissions as those made in the August 14, 2018 agreement. The amended Settlement Agreement proposed that the Respondent pay a fine of $20,000, costs in the amount of $5,000 and the Respondent to be suspended for a period of eight weeks from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member commencing on the date of the Order.

18. Counsel for Staff and the Respondent made submissions in respect to the Respondent having not conducted any securities business during the course of a license review by the FCNB in respect to the Respondent's insurance license. The FCNB review arose out of the conduct that gave rise to these proceedings. Although the Respondent misapprehended the effect of the review, it would not have prevented his securities activities, the Respondent refrained from conducting insurance or securities business for a period of seven weeks in December 2017 to February 2018.

19. The Panel is mindful of the principles to which Counsel referred and of the importance of the settlement process. It is a matter of highest importance that integrity and honesty form kingpins of the foundation of public trust and public interest in all regulated professions, particularly one that is entrusted with the investments and savings of the client.

20. Having considered all of these factors the Panel accepted the amended Settlement Agreement dated October 23, 2018 and issued an Order to that effect.

DATED this 11th day of February, 2019.

"R. Scott Peacock"
R. Scott Peacock
Chair

"Patrick Galarneau"
Patrick Galarneau
Industry Representative

"Jason Downey"
Jason Downey
Industry Representative

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