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: Gerald Daniel Rumball

Heard: December 11, 2015 in Toronto, Ontario
Reasons for Decision: January 14, 2016

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Mark J. Sandler	Chair
Guenther Kleberg	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Shelly Feld Paul Blasiak	))	Counsel for the Mutual Fund Dealers Association of Canada
Brian Duxbury	)	Counsel for the Respondent

Introduction

1. On December 9, 2015, Staff of the Mutual Fund Dealers Association of Canada (the "MFDA") and Gerald Rumball ("the Respondent") entered into a settlement agreement in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of MFDA By-law No. 1.

2. On December 11, 2015, after hearing submissions from counsel, we approved the Settlement Agreement, and signed an Order reflecting that approval. These are our written reasons for doing so.

Agreed Facts

Registration History

3. Between January 21, 1998 and May 17, 2013, the Respondent was registered in Ontario as a mutual fund salesperson/dealing representative with W.H. Stuart Mutuals Ltd. ("W.H. Stuart"). On March 26, 2003, W.H. Stuart became a Member of the MFDA. From March 26, 2003 to May 17, 2013, the Respondent was an Approved Person of W.H. Stuart.

4. In April 2013, another hearing panel made orders against W.H. Stuart and Marilyn Dianne Stuart ("Dianne Stuart") after Staff brought an application without notice pursuant to s. 24.3 of MFDA By-law No. 1 seeking orders in the public interest because of concerns about the conduct of W.H. Stuart and Dianne Stuart and uncertainty with respect to the solvency of W.H. Stuart.

5. On May 10, 2013, Keybase Financial Group Inc. ("Keybase"), another Member of the MFDA, signed an asset purchase agreement with W.H. Stuart which resulted in the bulk transfer of W.H. Stuart's client accounts and Approved Persons to Keybase. Accordingly, on May 17, 2013, the Respondent's registration was transferred from W.H. Stuart to Keybase. The

Respondent was an Approved Person of Keybase until he resigned on July 16, 2013. He has not been registered in the securities industry since then.

6. On May 31, 2013, another hearing panel made an order pursuant to section 24.3 of MFDA By-law No. 1 suspending W.H. Stuart from membership in the MFDA (the "Suspension Order").

7. Prior to the bulk transfer of its client accounts to Keybase, W.H. Stuart had approximately 18,800 client accounts and client assets under administration totaling $583 million. During the period of its membership in the MFDA, W.H. Stuart had between 200 and 400 Approved Persons providing services to its clients.

The MFDA Disciplinary Proceeding commenced against W.H. Stuart and its Principals

8. On November 27, 2014, the MFDA issued a Notice of Hearing in respect of a disciplinary proceeding commenced against W.H. Stuart and its principals, Dianne Stuart and Walter Howard Stuart ("Howard Stuart"). The Notice of Hearing alleged that:

(a) Dianne Stuart and W.H. Stuart solicited and accepted approximately $6 million from more than 180 clients purportedly to be invested on their behalf (the "Note Program"), which monies they used for the benefit of Dianne Stuart, W. H. Stuart and companies that they controlled and failed to repay or otherwise account for;
(b) Dianne Stuart and W.H. Stuart misappropriated or have otherwise failed to account for more than $800,000 of investments and monies from over 30 clients; and
(c) Dianne Stuart and W.H. Stuart actively concealed the Note Program and the misappropriation of client money from other Approved Persons of W.H. Stuart, external auditors, the MFDA and other regulators.

These allegations have not yet been heard on their merits.

9. Between October 2003 and May 2013, the Respondent solicited and accepted more than $2.5 million from clients of W.H. Stuart for investment in the Note Program, a substantial amount of which was not paid back or otherwise accounted for. The Respondent obtained those amounts from 12 clients whose accounts he was responsible for servicing. The Respondent's wife and son were among the clients from whom the Respondent solicited and accepted money for investment in the Note Program. The Respondent also invested more than $400,000 of his own money in the Note Program.

10. There is no evidence that the Respondent maintained personal possession of any of the money that he solicited from clients to be invested in the Note Program. The Respondent solicited the money for investment with and use by W.H. Stuart and its principals and affiliates.

Other Companies Affiliated With W. H. Stuart

11. In addition to operating W.H. Stuart, Dianne Stuart and Howard Stuart set up and supported the operations of several other companies in Canada and the United States, including a Canadian insurance brokerage called W.H. Stuart Insurance Agency Ltd. ("Stuart Insurance"). Dianne Stuart, W.H. Stuart and Howard Stuart also used the trade name "W.H. Stuart and Associates" on letterhead and documents from time to time. "W.H. Stuart and Associates" was a registered trade name of W.H. Stuart.

12. Since 1999, Dianne Stuart and Howard Stuart also financed the start-up of American companies that were owned and operated by members of the Stuart family, including Stuart Securities Corp., Stuart Mutuals, Stuart Financial Corporation and W.H. Stuart Insurance Agencies Inc. These companies were all incorporated in the state of Georgia and may have been financed in part using money solicited by means of the Note Program.

13. The Respondent was not an officer or director and did not exercise decision-making authority with respect to the operation of any of the companies affiliated with W.H. Stuart.

The Respondent Failed To Complete Adequate Due Diligence

14. The Respondent admits that he failed to conduct adequate due diligence concerning the investment opportunity with W.H. Stuart that he recommended to his clients. In particular, the Respondent did not:

(a) ask to see or review any offering documents or marketing materials describing the terms, anticipated benefits, risks, underlying assumptions, features, or attributes of the product;
(b) obtain any financial disclosure concerning the financial position and projections of the individual or entity that was receiving the money invested in the Note Program;
(c) ask questions about or obtain any meaningful information about:

(i) specifically, which individual or entity was offering the investment;
(ii) how the money received for investment was being used while it was invested;
(iii) why the money that was solicited was required;
(iv) the risks of the investment offered by the issuer;
(v) the justification for the guarantee of the return of principal to investors;
(vi) the basis for the issuer's claim that it could pay a guaranteed rate of return on the investment and the financial projections and assumptions underlying the belief that it would be able to consistently pay the promised rate of return;
(vii) the reason why the promised rate of return significantly exceeded the return promised in respect of other investment products that guarantee the safety of an investor's principal investment like Guaranteed Investment Certificates ("GICs");
(viii) details with respect to the liquidity of the investment such as:
(I) how quickly investors could redeem their investment in the Note Program if they required use of the money invested; and
(II) how the money to be paid to an investor upon redemption of an investment in the Note Program would be obtained by the issuer;
(ix) the costs to the issuer of administering the investment program;
(x) any charges that would be payable by investors in the Note Program; or

(xi) the reason why, according to the Respondent, no compensation would be paid to Approved Persons who solicited money for investment in the Note Program; or

(d) question whether the investment opportunity and his own involvement with the promotion of the investment was compliant with regulatory requirements including, for example:

(i) whether this type of non-mutual fund investment product was one that an individual registered as a mutual fund salesperson or dealing representative of a mutual fund dealer was permitted to sell;
(ii) the MFDA Rule concerning conflicts of interest (MFDA Rule 2.1.4); and
(iii) prospectus requirements or applicable exemptions.

15. The Respondent also did not consider whether any concentration limits should be observed in cases where he was inclined to recommend the investment of a large proportion of a client's portfolio in the Note Program.

16. The Respondent admits that without considering the important questions listed above, he could not properly evaluate whether the investment of client money in the Note Program was suitable for particular clients or compliant with regulatory requirements.

The Lack Of Documentation Associated With The Investment

17. When the Respondent began recommending the Note Program to clients, there was no documentation that had been prepared by the issuer of the investment to:

(a) provide mandatory regulatory disclosure to investors about the investment;
(b) document the fact that money was invested and provide a record for the investor and the issuer of the principal amount that was invested; or
(c) set out the contractual terms of the investment such as:

(i) the guarantee of the principal;
(ii) the term of the investment;
(iii) the rate of return payable and the frequency of such payments,
(iv) any fees applicable to the investment; and
(v) terms and conditions applicable to the redemption of the investment.

18. The Respondent agrees that the lack of standard documentation prepared by the issuer for advisors and investors associated with the Note Program both prior to and after trades were completed should have raised a red flag and should have triggered further inquiries from the Respondent about this investment product.

19. As a result of the lack of documentation prepared by the issuer, the Respondent personally drafted or provided notes setting out the terms of the investment as he understood them and the Respondent arranged for the notes to be signed by the clients who agreed to accept his recommendation to invest in the Note Program and by Dianne Stuart on behalf of the issuer.

20. After clients made an investment in the Note Program, the clients did not receive typical trade confirmations and investment statements from the issuer to confirm receipt of the funds or the status and performance of the client's investment. Trade confirmations and investment statements are typically sent to investors when investments are legitimate.

21. The Respondent knew or ought to have known that the lack of documentation and information concerning the Note Program was unusual when compared with other investment products that Approved Persons of W.H. Stuart were authorized to recommend to clients.

The Issuance Of Shares In Stuart Financial Corporation

22. Members of the Stuart family including James Stuart, the son of Dianne and Howard Stuart, owned and operated companies engaged in the financial services industry in the United States such as Stuart Financial Corporation ("SFC").

23. The investment notes that the Respondent drafted in 2004 and 2005 in respect of investments in the Note Program included provisions indicating that upon signing the investment notes which the Respondent had prepared, investors would be issued shares in SFC. Subsequently, certificates were provided to the clients who were promised shares in SFC. The certificates stated that Class A common shares in SFC had been issued to the clients in amounts consistent with the terms of the investment notes that those clients had signed.

24. Insufficient information was disclosed to clients to enable them to objectively determine:

(a) the value of the shares in SFC that were issued to them;
(b) whether there would be a market sufficient to enable the clients to sell their shares in SFC in the future; and
(c) whether dividends or other types of income would be paid to the holders of SFC shares on the basis of their ownership of such shares.

25. The Respondent did not make inquiries or conduct adequate due diligence to determine whether he or SFC was legally authorized to facilitate the issuance of shares in SFC to Canadian investors.

The Unsuitability Of The Note Program For Clients

26. Some of the clients who were solicited by the Respondent to participate in the Note Program had commuted their pensions and invested the proceeds in mutual funds recommended by the Respondent. The Respondent approached some of these individuals and advised them to redeem all or substantially all of their retirement savings (invested in mutual funds that the Respondent had previously recommended) and to invest the proceeds in the Note Program. Some of these clients incurred substantial deferred sales charge ("DSC") fees as a result of the Respondent's recommendation to sell their mutual funds prior to the expiry of their DSC schedule. The clients were not reimbursed the amount of these DSC fees.

27. If the Respondent had conducted due diligence with respect to the Note Program, he ought to have determined that the investment constituted nothing more than an unsecured loan arrangement between the issuer and investors and that no financial disclosure was available to clients concerning:

(a) the total amount of money that the issuer was borrowing;
(b) the number of investors that the issuer was borrowing from; or
(c) any impediments or limitations on the ability of the issuer to repay the loan.

28. The Respondent recommended and facilitated investments in the Note Program as summarized below:

Client	**Date**	**Amount**	**DSC Fees Paid**	**Shares In SFC**
The Respondent's wife	October 20, 2003	$279,920.00 (with no note or documentation issued)	None disclosed	None disclosed
WS	July 17, 2004	$319,000.00	$14,333.00	250 shares
LR	July 26, 2004 August 16, 2004 Total:	$323,700.00 $ 33,564.00 $357,264.00	$15,300.00 $ 1,581.00 $16,881.00	500 shares 150 shares 650 shares
RM	August 3, 2004 August 3, 2004 Total:	$553,900.00 $ 85,030.00 $638,940.00	$26,100.00 $ 4,006.00 $30,106.00	500 shares 100 shares 600 shares
KS	November 7, 2004	$289,753.00	None	350 shares
JH	December 4, 2005 December 4, 2005 Total:	$147,999.00 $ 62,000.00 $209,999.00	None	147 shares 62 shares 209 shares
NS	October 4, 2006 October 18, 2007 October 19, 2007 February 8, 2008 March 1, 2008 March 1, 2008	$21,633.28 (the only investment of NS that was documented) $ 4,688.54 $ 2,970.23 $14,434.60 $ 2,155.74 $ 2,605.08	None	None

Client	Date	Amount	DSC Fees Paid	Shares In SFC
	June 2, 2008 April 16, 2008 Total:	$15,786.78 $ 8,822.93 $73,096.90 NS was promised 100% interest annually rather that the 7% promised others.		
EB	August 25, 2007	$290,000.00	None	None
The Respondent's son	March 20, 2008	$ 15,322.02 (with no note or documentation issued)	None	None
JB	April 1, 2010	$50,000.00	None	None
DM	September 10, 2010	$150,000.00	None	None
SM	November 21, 2012	$19,281.06 (with no note or documentation issued)	None	None
	Total	**$2,792,565.90**		

29. According to the Respondent's records, in August 2003, he also personally invested approximately $463,981.00 of his own retirement savings in the Note Program. No note or other documentation was issued to him.

The Respondent's Representations and Risk Disclosure to Investors

30. The Respondent solicited and accepted money from clients of W.H. Stuart for investment in the Note Program on his own. He did not bring other representatives of W.H. Stuart to the meetings that he attended with clients or include other representatives of W. H. Stuart on telephone calls with clients. The Respondent also sent written representations about the investment to some clients that were not reviewed or approved by the issuer. The Respondent thereby assumed responsibility for inaccuracies in the representations that he made to clients

about the investment and for deficiencies in the extent of the disclosure that was provided to clients about the nature and extent of risks associated with the investment.

31. The Respondent made representations to at least one client in support of his recommendation to invest in the Note Program that included the following:

(1) "W.H. Stuart is offering this investment opportunity because we are in a unique situation with a growing company in the United States. Currently, we have clients and prospective clients that we can only attract if we put a full-force team together to both train additional reps and to expand the capability of our customized software. To accomplish this, we will require initial capital that will be recouped once the clients are with us. Without the capital, we will lose the prospective clients and restrict the speed with which we can bring on the existing clients. The future profits are such that we are prepared to pay a premium;"
(2) "The bottom line is that you are guaranteed 7% interest on the invested money in all accounts and that sure beats what has been happening in the markets in the past three years;"
(3) "I have all the faith in the world in the Stuarts. Their track record since 1958 proves to me that they are here to stay;"
(4) "[SFC] is presently a private corporation owned wholly by the Stuart Family;"
(5) "[SFC] plans on going public in the future (1 year?);"
(6) "Once [SFC] issues it's (*sic*) initial public offering the stock you hold will have the value of the stock on the public market."

32. The Respondent does not have documentation from the issuer or other corroborating support to demonstrate the accuracy of these representations. As it turned out, W. H. Stuart was not able to honour its guarantee of principal or interest to investors in the Note Program, SFC did not go public and the shares in SFC that were issued to clients do not have any negotiable value.

33. The Respondent admits that he did not provide clients with sufficient information about the risks associated with the Note Program or perform sufficient due diligence to objectively

evaluate the risk of default by the issuer on the payment of promised interest or on the repayment of principal. The Respondent also admits that he failed to ensure that the retirement savings of his clients were diversified. By investing all or substantially all of the retirement savings of his clients in a single investment, he increased the risk to his clients of financial calamity.

34. The Respondent did not obtain or request any information or ongoing reporting about how the money solicited from clients was being used by the issuer or whether the objectives that the Respondent was pursuing were being achieved as intended. Consequently, the Respondent was unable to ensure that his recommendation to clients to continue or increase their investments in the Note Program was suitable and in the best interest of his clients.

35. By failing to identify and disclose to clients the risks associated with the Note Program or to conduct and maintain records of due diligence to confirm the accuracy of representations that he made to clients, the Respondent failed to adequately know the product that he recommended to clients and he failed to provide clients with a fair and balanced presentation when he recommended that clients invest in the Note Program.

The MFDA Investor Protection Corporation

36. On September 6, 2013, the MFDA Investor Protection Corporation (the "IPC") obtained a bankruptcy order respecting W.H. Stuart. The IPC is a not-for-profit corporation that is a separate legal entity from the MFDA. Its mandate is to provide compensation to clients for certain types of losses suffered by customers as a result of the insolvency of an MFDA Member.

37. As a consequence of the bankruptcy, neither W.H. Stuart nor any of its affiliated companies has paid back to clients or to the Respondent all of the money that they invested in the Note Program or all of the interest that was promised to them.

38. More than 200 claims for compensation were submitted to the IPC, most of which were based upon client losses associated with the Note Program. The total claims submitted to the IPC from the 12 clients of the Respondent listed above amount to approximately $2 million. This

constitutes more than 20% of the total value of all claims received by the IPC following the insolvency of W.H. Stuart.

39. To date, the IPC has paid out approximately $1.2 million in compensation to clients of the Respondent. This constitutes approximately 20% of the compensation paid by the IPC to individuals who claimed compensation for losses associated with the Note Program.

40. The Respondent and his wife have submitted claims to the IPC for compensation totaling more than $500,000 in losses based upon the Respondent's calculations. However, no compensation has been paid to them by the IPC as the IPC has reserved its decision about their eligibility to receive compensation from the IPC pending the outcome of the MFDA enforcement process.

The Respondent's Personal Circumstances and Background

41. The Respondent is presently 74 years old and suffers from significant medical conditions including prostate cancer. During the past year, he has frequently been hospitalized and some of his medical conditions have required surgery.

42. Partly as a result of his age and medical condition, the Respondent is not presently employed.

43. As already indicated, the Respondent claims that W.H. Stuart failed to repay or otherwise account for more than $500,000 that he believes is owed by W.H. Stuart to him and to his wife. The Respondent maintains (and the MFDA does not dispute) that these losses have resulted in substantial financial hardship. Nor does the MFDA dispute the submissions made by counsel on behalf of the Respondent that the Respondent was a highly respected member of his community, with significant ties to that community, in part as a result of his previous work as an educator. He is obviously deeply affected by and remorseful about his involvement in the activities outlined above.

Analysis

44. The Respondent admits that between October 2003 and May 2013, he failed to use due diligence to ensure that the orders that he accepted and the investment recommendations that he made to approximately 12 clients to enter into investment agreements with W.H. Stuart or its principals or affiliated companies (the "Note Program") were suitable for the clients and within the bounds of good business practice, contrary to MFDA Rules 2.2.1 and 2.1.1.

45. The Respondent also admits that between October 2003 and May 2013, he:

(a) failed to conduct adequate due diligence to determine and understand the nature of the investment and the extent of the risks associated with investments in the Note Program; and
(b) failed to adequately explain to clients the risks, benefits, material assumptions and features of investments in the Note Program; and

thereby failed to know the product and present the recommendations to invest in the Note Program in a fair and balanced manner, contrary to MFDA Rules 2.2.1 and 2.1.1.

Terms of Proposed Settlement

46. The parties jointly proposed that we order the following:

(a) the Respondent shall be permanently prohibited from re-applying for registration as an Approved Person or conducting securities related business while in the employ of or associated with any Member of the MFDA;
(b) the Respondent shall pay a fine in the amount of $25,000 in two installments as follows:
    (i) $10,000 payable on the date that the Settlement Agreement is accepted by the Hearing Panel; and
    (ii) the balance payable on or before March 1, 2016; and

(c) the Respondent shall pay costs immediately in the amount of $5,000.

47. As reflected in our jurisprudence, a hearing panel should not interfere lightly in a negotiated settlement. More specifically, it should not reject a Settlement Agreement unless it views the proposed disposition as clearly falling outside the range of reasonableness. In our view, the Settlement Agreement is not contrary to the public interest, and falls within the range of reasonable outcomes available to us in the circumstances.

48. The misconduct here was serious. It took place over a lengthy period of time. The Respondent almost entirely abdicated his responsibility to ensure that he understood the product that he recommended to clients. As a result, he was unable to make an informed judgment about its suitability or explain the risks truly associated with the product. He failed to appreciate red flags that should have been obvious to him, including the "guaranteed" returns on these investments, and the absence of standard documentation prepared by the issuer for investors and advisors concerning both the features of the Note Program and the particular investments made by clients. These failings were compounded by his failure to exercise any judgment about the amount and concentration of investments that he recommended in the Note Program. As a result, many of his clients invested a substantial proportion of their retirement savings in this one product.

49. A number of the Respondent's clients were at significant risk as a result of their involvement in the Note Program. If IPC coverage had not been available, it is likely that the clients would have sustained between $1.2 and $2 million in losses. Although the clients generally recouped most of the money they initially invested in the Note Program, they lost a significant portion of the returns they were promised. It is obvious that their investment experience detrimentally affected their confidence and the confidence of other investors in the industry.

50. We accept that the Respondent believed in the merits of the Note Program. He did not knowingly deceive his clients as to the suitability of the product. His enthusiasm for the product was reflected by his own heavy investment in the Program, together with his wife and son. He

and his family incurred significant losses as a result of their own investment in the Note Program. It remains unclear whether he and his wife will be compensated by IPC for their losses. The MFDA concedes that there is no evidence that the Respondent was actually compensated for his activities here. Of course, these facts do not relieve the Respondent of his regulatory liability, but do contextualize his misconduct, and serve as mitigating circumstances.

51. We are also mindful of the fact that the Respondent has an otherwise unblemished record in the industry, and had an exemplary reputation in his community. He is deeply remorseful, and has cooperated fully with the MFDA both in its investigation and in facilitating a settlement of these proceedings.

52. In our view, the Respondent's permanent prohibition from the industry is consistent with the seriousness of his misconduct, serves to generally deter others, and fosters confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process.

53. We are satisfied that the proposed fine of $25,000 is appropriate. The Respondent has suffered significant financial hardship as a result of his involvement here. He will no longer be employed in the industry. He is dealing with illness. He has already paid the first installment of the proposed fine and appears to be genuinely committed to paying the second installment, despite his permanent prohibition from the industry. We recognize that a fine in this amount will not always adequately address serious conduct. However, in the particular circumstances of this case, the proposed fine is reasonable.

54. The Respondent has agreed to pay costs of $5,000 immediately. Those costs have already been remitted to the MFDA pending this hearing. It is appropriate that the Respondent bear some responsibility, rather than the MFDA or the profession as a whole, for the costs associated with this case.

55. In summary, the Settlement Agreement falls within the range of reasonable outcomes available in the circumstances.

Order

56. For these reasons, the Settlement Agreement was approved.

57. We are grateful to the parties for their assistance, most particularly their hard work in putting forward a joint position that is in the public interest.

Postscript

58. Other proceedings pertaining to W.H. Stuart, its principals and employees are taking place or may be initiated in the future. Here, we proceeded entirely on the basis of the parties' agreement as to the facts. Facts that were agreed upon in this proceeding may or may not be contested in other proceedings. In other proceedings, hearing panel members are not governed by any facts agreed upon for the purposes of this proceeding.

DATED this 14th day of January, 2016.

"Mark J. Sandler"

Mark J. Sandler
Chair

"Guenther Kleberg"

Guenther Kleberg
Industry Representative

"Kenneth P. Mann"

Kenneth P. Mann
Industry Representative

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