



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: Terry Lynn Sampson

Heard: July 9, 2010 in Edmonton, Alberta
Reasons for Decision: July 28, 2010

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

The Hon. Mary M. Hetherington, Q.C.	Chair
M. Elaine Bradley	Industry Representative
Kathleen Jost	Industry Representative

Appearances:

Lyla Simon)	For the Mutual Fund Dealers Association of
)	Canada
Terry Lynn Sampson)	In Person
)	
)	

1. The Staff of the Mutual Fund Dealers Association of Canada and Terry Lynn Sampson entered into a Settlement Agreement pursuant to section 24.4.1 and 2 of By-law No. 1 of the MFDA. On the recommendation of the MFDA, and in accordance with section 24.4.3 of the By-law, the Settlement Agreement was then referred to this Hearing Panel for acceptance or rejection.

2. As indicated above, Lylla Simon appeared as Enforcement Counsel for the MFDA. Mrs. Sampson appeared without counsel.

3. At the outset, Ms. Simon asked that the Panel direct that the hearing proceed *in camera*. Mrs. Sampson did not object, and the Panel made this direction.

SETTLEMENT AGREEMENT

4. The Settlement Agreement is dated May 30, 2010. It is attached to these Reasons for Decision and marked as Appendix A.

Facts

5. The Settlement Agreement discloses that for the purposes of the agreement the MFDA Staff and Mrs. Sampson have agreed upon the following facts.

6. The Bank of Nova Scotia employed Mrs. Sampson as a Personal Banking Officer from 1990 to 2008. From the 23rd of September, 1998, to the 23rd of July, 2008, she was registered in Alberta as a mutual fund salesperson with Scotia Securities Inc. Scotia Securities Inc. became a Member of the MFDA on October 25, 2001.

7. Mrs. Sampson has not on any other occasion been the subject of an MFDA disciplinary proceeding. She is not currently registered in the securities industry.

8. In the Settlement Agreement Mrs. Sampson admitted that:

- (1) From January, 2006, to July, 2008, she misappropriated approximately \$167,500 from six clients of Scotiabank, contrary to MFDA Rule 2.1.1;
- (2) In or about March, 2008, she misappropriated approximately \$5,000 from the account of a client of Scotia Securities, contrary to MFDA Rule 2.1.1; and
- (3) From November, 2008 to May 4, 2010, by failing to comply with a request by MFDA Staff that she provide a written statement concerning the matters under investigation, she failed to cooperate with an MFDA investigation, contrary to section 22 of MFDA By-law No. 1.

Particulars of these contraventions are contained in Part IV of the Settlement Agreement.

9. Before the conduct described in paragraphs (1) and (2) above was discovered by Scotiabank or Scotia Securities, Mrs. Sampson reported it to the Edmonton Police Service. When it came to the attention of Scotiabank and Scotia Securities in 2008, they terminated her employment with them.

10. On the 24th of July, 2009, Mrs. Sampson plead guilty to a charge that she defrauded Scotiabank of over \$5,000. As a result, on December 10, 2009, she was sentenced to be imprisoned for 18 months. However, she was permitted to serve that sentence in the community subject to a number of conditions. Among these conditions was a requirement that she remain in her house for the first nine months. She was required to remain in her house between 9:00 p.m. and 7:00 a.m. during the second nine months. She was also ordered to make restitution to Scotiabank in the amount of \$132,000.

11. Mrs. Sampson is struggling to overcome a gambling addiction, and is not currently employed. As a result, she has not been able to make any payment to Scotiabank, and it has filed a writ against her home for the full amount of \$132,000.

12. Mrs. Sampson and her husband have declared bankruptcy.

13. Although Mrs. Sampson did not cooperate with the MFDA investigation prior to the 4th of May, 2010, she has cooperated since that date.

Terms of Settlement

14. In the Settlement Agreement Mrs. Sampson agreed to an Order prohibiting her from acting as a mutual fund salesperson while in the capacity of or associated with a Member of the MFDA, pursuant to section 24.1(e) of MFDA By-law No. 1. The Staff of the MFDA agreed that:

- if the Settlement Agreement was accepted by this Hearing Panel, and
- if Mrs. Sampson honoured the terms of the settlement,

it would not initiate any proceedings against Mrs. Sampson under the By-laws of the MFDA in respect of the facts set out in the Settlement Agreement.

DECISION OF HEARING PANEL

15. Ms. Simon referred the Panel to decisions of other Panels in similar cases. She also referred the Panel to the MFDA Penalty Guidelines. These Guidelines set out "...the general principles which should be considered in penalty decisions in all disciplinary cases." They also deal with case types that commonly arise. With respect to each of these types, the Guidelines set out specific factors which should be considered in addition to the general principles. Further they set out types and ranges of penalties appropriate to the case type. Where a disciplinary proceeding involves a case type that is not described in the Guidelines, it is suggested that guidance can be obtained by comparison with a case type that is described in the Guidelines.

16. However, the Penalty Guidelines are not mandatory. "Depending on the facts and circumstances of a case, MFDA Staff and Hearing Panels may determine that no purpose is served by imposing a penalty within the range stated in the Guidelines; i.e., that a penalty below the stated range, or no penalty at all, is appropriate."

17. In particular, Ms. Simon referred the Panel to the penalty types and ranges suggested for misappropriation and failure to cooperate with an investigation by the MFDA. For misappropriation, the suggested penalty types and ranges are a fine of a minimum of \$25,000 and a permanent prohibition. For failure to cooperate the suggested penalty types and ranges are a fine of a minimum of \$50,000 and a permanent prohibition.

18. The penalty provided for in the Settlement Agreement is not as severe as those described above. While it does provide for a permanent prohibition, it does not contemplate the payment of a fine. However, this Panel is of the view that it is appropriate in the circumstances of this case. In coming to this conclusion it has taken into consideration the following facts:

- Mrs. Sampson was employed by Scotiabank for 18 years. During that time she was not on any other occasion the subject of an MFDA disciplinary proceeding.
- Mrs. Sampson benefited financially from the misappropriation described above, but she was addicted to gambling at the time.
- She reported the misappropriation to the police before it was discovered by Scotiabank or Scotia Securities.
- Mrs. Sampson is still serving a sentence of eighteen months as a result of the misappropriation described above.
- It appears that the clients whose money was misappropriated have been reimbursed by Scotiabank. Scotiabank has obtained an order for restitution and has taken steps to enforce it.
- Mrs. Sampson does not have the means to pay a fine in any amount. She is 46 years old and unemployed. As a result she has not been able to make any payment by way of restitution to Scotiabank, which has filed a writ against her house. She and her husband have declared bankruptcy.
- Mrs. Sampson is not registered in the securities industry, and will not return to the mutual fund industry.

- Although Mrs. Sampson did not cooperate with the MFDA investigation until the 5th of May, 2010, she initiated contact with the Staff on that date and has cooperated fully since that time.
- Mrs. Sampson admitted the allegation of misconduct under investigation by the MFDA and signed the Settlement Agreement. As a result, the MFDA has been spared the expense of further investigation and a full hearing.

19. The Hearing panel is of the view that Mrs. Sampson’s experiences and the penalty provided for in the Settlement Agreement are such as to deter Mrs. Sampson and others from contravening the MFDA Rules as Mrs. Sampson did. It is satisfied that those experiences and that penalty suffice to protect the investing public. The Hearing Panel therefore accepted the Settlement Agreement pursuant to section 24.4.3 of the MFDA By-laws on the 26th of October, 2009. The members of the Hearing Panel signed an Order to this effect on that date. A copy of this Order is attached to the Reasons for Decision as Appendix B.

DATED this 28th day of July, 2010.

“Mary Hetherington”

The Hon. Mary Hetherington, Q.C.,
Chair

“Elaine Bradley”

Elaine Bradley,
Industry Representative

“Kathleen Jost”

Kathleen Jost,
Industry Representative



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**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Terry Lynn Sampson

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (“MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Prairie Regional Council (“Hearing Panel”) of the MFDA should accept the settlement agreement (“Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Terry Lynn Sampson (“Respondent”).

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 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 X) 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. From September 23, 1998 to July 23, 2008, the Respondent was registered in Alberta as a mutual fund salesperson with Scotia Securities Inc. (“Scotia Securities”), a Member of the MFDA.

7. The Respondent was also employed as a Personal Banking Officer by the Bank of Nova Scotia (“Scotiabank”) from 1990 to 2008.

8. The Respondent was terminated by Scotia Securities and Scotiabank as a result of the events described herein.

9. Scotia Securities became a Member of the MFDA on October 25, 2001.

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

11. The Respondent has had no prior disciplinary history with the MFDA.

Additional Relevant Facts

12. Of her own accord, and before any of the events described herein were discovered by Scotia Securities or Scotiabank, the Respondent turned herself in to Edmonton Police.

13. On July 24, 2009, the Respondent pleaded guilty to criminal charges of unlawfully defrauding the Bank of Nova Scotia of money of a value exceeding \$5,000 stemming from the same facts as are alleged in the Notice of Hearing in this matter.

14. On December 10, 2009, the Respondent was sentenced to a term of imprisonment of 18 months, the first 9 months to be served by way of 24-hour residential house arrest, and the second 9 months to be served by way of residential house arrest between the hours of 9:00 p.m. and 7:00 a.m.

15. In the disposition of the criminal proceedings, the Respondent was also ordered to pay restitution to Scotiabank in the amount of \$132,000.

16. The Respondent and her spouse have jointly declared bankruptcy.

17. The Respondent is recovering from a gambling addiction, is not currently employed, and has not paid any monies to Scotiabank.

18. Scotiabank has placed a lien on the Respondent's residential home in the amount of the judgment ordered, namely \$132,000.

Misappropriation from Bank Clients

19. From January 2006 to July 2008, the Respondent misappropriated approximately \$167,500 from the accounts of six Scotiabank clients, as follows:

- Client GR - \$75,000;
- Client LB(1) - \$75,000;
- Client LB(2)¹ - \$6,000;
- Client LE - \$2,000;

¹ Clients LB(1) and LB(2) are two unrelated clients bearing the same initials.

- Client CW - \$3,000; and
- Client MD - \$6,500.

Misappropriation from Member Client

20. On or about March 17, 2008, the Respondent processed a redemption in the amount of \$5,000 in the account of client MD², without MD's knowledge or approval.

21. The funds were in a registered account such that the redemption proceeds were subject to withholding tax in the amount of \$500, as well as a redemption fee in the amount of \$50. Accordingly, the net redemption proceeds after deductions were \$4,450.

22. On or about March 20, 2008, the Respondent directed the redemption proceeds to be deposited into MD's Scotiabank savings account, without MD's knowledge or approval.

23. The Respondent then purchased a bank draft in the amount of \$4,450 on MD's bank account payable to her own (the Respondent's) CIBC Visa credit card account, without MD's knowledge or approval, thereby misappropriating MD's monies.

Failure to Cooperate

24. By letter dated November 28, 2008, MFDA Staff notified the Respondent that according to Scotia Securities, the Respondent had been terminated for taking client monies without their knowledge or consent. Staff requested the Respondent's written response to the circumstances surrounding her termination.

25. Having received no response, Staff wrote to the Respondent several more times in 2009, again without receiving any response.

26. On May 5, 2010, the Respondent contacted Staff and has fully cooperated with Staff since that time.

V. CONTRAVENTIONS

27. The Respondent admits that:

² MD is the same MD referred to in para. 6 from whose bank account the Respondent misappropriated \$6,500.

- (i) From January 2006 to July 2008, she misappropriated approximately \$167,500 from six bank clients, contrary to MFDA Rule 2.1.1;
- (ii) In or about March 2008, the Respondent misappropriated approximately \$5,000 from the account of a client of the Member, contrary to MFDA Rule 2.1.1; and
- (iii) From November 2008 to May 4, 2010, by failing to comply with a request by MFDA Staff that she provide a written statement concerning the matters under investigation, the Respondent failed to cooperate with an MFDA investigation, contrary to section 22 of MFDA By-law No. 1.

VI. TERMS OF SETTLEMENT

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

- (i) The Respondent shall be permanently prohibited from acting as a mutual fund salesperson while in the employ of or associated with a Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1; and
- (ii) The Respondent shall attend in person at the Settlement Hearing.

VII. STAFF COMMITMENT

29. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part VI of this Settlement Agreement, subject to the provisions of Part X below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and VI of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and VI, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

30. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

31. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive its her rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

32. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

33. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against it her.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

34. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honor any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may

be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

35. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

36. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that she will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

37. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

38. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

39. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

40. A facsimile copy of any signature shall be effective as an original signature.

Dated: May 30, 2010

Witness Signature: “Clifford Sampson”

“Terry Sampson”
Terry Lynn Sampson

Witness Name (print): Clifford Sampson

“Shaun Devlin”
Staff of the MFDA
Per: Shaun Devlin
Vice-President, Enforcement



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Re: Terry Lynn Sampson

ORDER

WHEREAS on June 15, 2010, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Terry Lynn Sampson (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated May 30, 2010 (the “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 By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that:

- i. From January 2006 to July 2008, the Respondent misappropriated approximately \$167,500 from six bank clients, contrary to MFDA Rule 2.1.1;
- ii. In or about March 2008, the Respondent misappropriated

approximately \$5,000 from the account of a client of the Member, contrary to MFDA Rule 2.1.1; and

- iii. From November 2008 to May 4, 2010, by failing to comply with a request by MFDA Staff that she provide a written statement concerning the matters under investigation, the Respondent failed to cooperate with an MFDA investigation, contrary to section 22 of MFDA By-law No. 1;

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and
2. If at any time a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, the Corporate Secretary shall prepare copies of the requested exhibits, redact any and all intimate financial or personal information therefrom, and provide the redacted copies to the non-party, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED: this 9th day of July, 2010

Per: “Mary M. Hetherington”
The Honourable Mary Hetherington, Chair

Per: “Elaine Bradley”
Elaine Bradley, Industry Representative

Per: “Kathleen Jost”
Kathleen Jost, Industry Representative