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: Christopher J. Singer

Heard: February 22, 2017, in Vancouver, British Columbia
Reasons for Decision: March 7, 2017

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield	Chair
Darlene Barker	Industry Representative
Holly Millar	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
Robert Brush	)	Counsel for the Respondent, who appeared personally

1) On February 22, 2017, we approved a Settlement Agreement signed on February 14, 2017 between the Mutual Fund Dealers Association of Canada (the "MFDA") and Christopher J. Singer (the "Respondent") after hearing submissions from counsel on behalf of the MFDA and the Respondent.

2) The Order we granted provides that:

a) The Respondent shall pay a fine in the amount of $63,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

b) The Respondent shall pay costs in the amount of $10,000, pursuant to s. 24.2 of MFDA By-law No.1; and

c) 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.*

Agreed Facts

3) The agreed facts upon which the Settlement Agreement was based are the following.

4) The Respondent has been registered in the mutual fund industry since July 2001. He has been registered as a mutual fund salesperson (now termed a dealing representative) with FundEX Investments Inc. ("FundEX"), a Member of the MFDA, since July 2004. He was registered as a branch manager in September 2009, a registration that ceased approximately three years ago. The Respondent carries on business in White Rock, British Columbia under the trade name "Singer Olfert Financial Group".

5) AO, a single, 62-year old realtor, became a client of the Respondent in March 2011. She had a novice level of investment knowledge and intended to retire within three to five years.

6) In June 2011, the client sold her home. She consulted with the Respondent regarding the investment of the sale proceeds approximating $1.15 million. She told the Respondent that she intended to apply $800,000 to $900,000 to the purchase of a new home as soon as she could find an appropriate property; she wanted that portion of her savings to be placed in a low risk, short-term investment to ensure the preservation of the capital required for the anticipated home purchase; and she wanted to invest the remaining $300,000 to $400,000 in a manner that would provide her with a source of savings and income to support her during her retirement. She intended to retire between the ages of 65 and 68. In the New Account Application Form the Respondent recorded his client's investment knowledge as "novice"; her risk tolerance as "100% moderate"; and her investment time horizon as three to five years.

7) The Respondent recommended that the client apply the sum of $485,000 towards the purchase of units of the ROI Private Placement Fund, and $650,000 towards the purchase of units of the ROI High Yield Private Placement Fund (the "ROI Funds") for a total investment of $1.135 million. Both funds were managed by ROI Capital Ltd.

8) The ROI Funds were exempt securities and marketed as open-end investment funds consisting primarily of higher yielding private placements of capital in debt obligations and/or equity securities issued by businesses seeking non-bank financing. The investment objective of the Funds was long-term capital appreciation.

9) FundEX approved ROI Funds for sale by its Approved Persons and classified the funds as "medium risk". FundEX considered the ROI Funds suitable for sophisticated investors with a long-term time horizon. There is no evidence that this characterization was communicated to the client. The Respondent states that when he recommended the investment to his client he was not aware and had not been told by FundEX that the ROI Funds were not suitable for a novice investor.

10) The client accepted the Respondent's investment advice. Her funds were invested in July 2011. On November 17, 2011 FundEX sent a compliance memorandum to its Approved Persons, including the Respondent, indicating among other things that it would be reviewing portfolios that exceeded a concentration of 25% in ROI Funds and that it may require advisors to review portfolio holdings with certain clients. FundEX also advised "it is the expectation of the regulators that a client holding a greater allocation in one fund would have higher risk tolerance and a longer time horizon."

11) On December 1, 2011, FundEX sent another compliance memorandum stating that that Approved Persons should discuss the concentration level of their clients' portfolios and explain the increased risk that can result from a less diverse portfolio; the client should have an increased appetite for risk if the client wishes to continue to hold the ROI Funds with limited diversification; the client should have a minimum time horizon of 5 years; the client should sign an acknowledgment; and Approved Persons should record detailed notes of the client meetings. The Respondent does not appear to have done any of these things in so far as this client was concerned.

12) On March 9, 2012, ROI halted redemptions in the Funds as part of a plan to restructure the Funds as closed-end investment funds to be publicly traded on the Toronto Stock Exchange.

13) On October 3, 2012, the client had an opportunity to purchase a property. She was unable to proceed with the purchase because redemptions of her ROI Fund units could not be processed. The ROI Funds were listed on the Toronto Stock Exchange on December 4, 2012. The client redeemed her investments in the ROI Funds between April 3 and May 9, 2014. The client incurred a loss of $92,657 on her investment which FundEX has reimbursed.

Allegations of By-law Infractions

14) The allegations admitted by the Respondent are that:

a) between June 2011 and March 17, 2014, the Respondent failed to use due diligence to learn the essential facts relative to client AO and accurately record

the essential facts on the client's New Account Application Forms, contrary to MFDA Rules 2.2.1(a) and 2.1.1;

b) between June 2011 and March 17, 2014, the Respondent failed to ensure that an investment recommendation he made to client AO was suitable having regard to the client's Know-Your-Client ("KYC") factors including her investment objectives, investment knowledge, risk tolerance, time horizon, and failed to ensure appropriate diversification of her investment portfolio, contrary to MFDA Rules 2.2.1 and 2.1.1;

c) between June 2011 and March 17, 2014, the Respondent failed to adequately explain the risks, benefits, material assumptions and features of exempt securities he recommended to client AO, thereby failing to present the investment to the client in a fair and balanced manner, contrary to MFDA Rules 2.2.1 and 2.1.1; and

d) between November 17, 2011 and March 17, 2014, the Respondent failed to review or reconsider his recommendation to client AO in light of criteria for assessing the suitability of the ROI Funds provided by the Member FundEX in December 2011, contrary to MFDA Rules 2.2.1 and 2.1.1.

Submissions of Counsel

15) Counsel for the MFDA submitted that the Respondent knew or ought to have known that the client's objective to ensure the preservation of $800,000 to $900,000 that she intended to apply towards the purchase of a new home was incompatible with a medium risk tolerance; the client's intention to apply a large portion of her savings towards the purchase of a new home as soon as she could find an appropriate property to purchase was incompatible with a time horizon of three to five years; and ROI Funds were not suitable for a "novice" investor. The Respondent admits that the investment recommendation was not suitable.

16) Counsel says that the Respondent breached the requirements of MFDA Rule 2.2.1 concerning client accounts by failing to use due diligence to learn essential facts about his client; by making an unsuitable recommendation; by failing to adequately explain the risks of exempt securities to his client; and by failing to review or reconsider his recommendation to his client

after he became aware of the criteria for suitability where ROI Funds were concerned. In sum, the Respondent failed to adhere to the MFDA's "know-your-client" and "suitability of investment" requirements.

17) MFDA counsel says that the Respondent's failure to adhere to Rule 2.2.1 was a breach of MFDA Rule 2.1.1, to wit:

> 2.1.1. Standard of Conduct. Each Member and each Approved Person of a Member shall:
>
> (a) deal fairly, honestly and in good faith with its clients;
> (b) observe high standards of ethics and conduct in the transaction of business;
> (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
> (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

18) Counsel for the Respondent does not dispute any aspect of the submission made MFDA counsel. By way of mitigation, counsel says that the MFDA does not dispute the Respondent's statement that when he recommended the ROI Funds investment to his client he had not been told by FundEX that they were not suitable investments for a novice investor, or that the investment was not queried when it was reviewed by FundEX for suitability. Finally, counsel points out that while FundEX advised its Approved Persons, including the Respondent, that it would identify clients whose accounts should be reviewed because of ROI holdings, the Respondent's client was not identified.

Panel Analysis

19) The Panel recognizes that it must accept or reject a Settlement Agreement in its entirety. It is well established that a Settlement Agreement should be approved if the sanctions imposed fall within the range of reason having regard for all of the relevant circumstances. The Panel is not permitted to amend the Settlement Agreement should it be of the view that some other penalty would be more appropriate. Specifically, the Panel recognizes that it should respect the reasoning in *Re: Jacobson*, 2007 MFDA 27, July 13, 2007, Prairie Regional Council. In that

case, a panel stated that hearing panels have taken into account the following considerations when determining if a proposed settlement should be accepted:

Whether:

(a) acceptance of the Settlement Agreement would be in the public interest and whether the penalties imposed will protect investors;
(b) the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
(c) the Settlement Agreement addresses the issues of both specific and general deterrence;
(d) the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
(e) the Settlement Agreement will foster confidence in the integrity of the Canadian Capital Markets; and
(f) the Settlement Agreement will foster confidence in the integrity of the MFDA.

20) The use of a Settlement Agreement to reflect a negotiated settlement should be encouraged provided the penalties set forth in the agreement "strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets, and prevention of a repetition of the offense": *Re: Kelvin Donald Byce*, MFDA File No. 201311, September 4, 2013, Central Regional Council, para.5.

21) In this case, counsel for the MFDA says that the proposed penalty is appropriate because the failure to consider suitability of an investment and the failure to accurately record "know your client" information is serious misconduct; the client suffered a loss of $92,657; and a significant fine is required for purposes of specific and general deterrence. Counsel notes that to the Respondent's credit, he has not been previously disciplined by the MFDA, he has co-operated with the investigation, and he has admitted to the misconduct.

22) The Respondent's failure to consider suitability amounts to serious misconduct. An assessment of suitability requires the use of due diligence to know the product and to know the client; the application of sound professional judgment in establishing the suitability of the product for the client; and disclosure of the negative as well as the positive aspects of the proposed investment: *Re Daubney,* 2008 LNONOSC 338 (OSC), at para.17. The failure to diversify added to the egregious nature of the Respondent's conduct given the client's obvious lack of investment experience and her expressed desire to have ready access to her funds to enable the purchase of a property to replace the home she had sold. As counsel stated in his submission, "the Canadian investment industry has always recognized the inherent danger of an investor concentrating his/her holdings of securities in a given sector of the economy, let alone in the volatile securities of only one or two issuers in that given sector": *Re Biduk*, 2013 IIROC 19 at para. 87.

23) Counsel referred to two authorities: *Re Dirani*, 2014 IIROC 09, and *Re Mervyn Jachiel Fried*, MFDA File No. 201242, October 15, 2014, Central Regional Council, in support of his submission that the fine imposed by settlement in this case was reasonable. While neither case is identical to the one before us and the fines imposed were less than that now agreed to, there is nothing to suggest the fine in this case, although at the high end of the range, is outside the range of reason. The Respondent does not say otherwise.

24) For the foregoing reasons, the panel approved the Settlement Agreement and the resulting Order.

DATED this 7th day of March, 2017.

"Ian H. Pitfield"

Ian H. Pitfield
Chair

"Darlene Barker"

Darlene Barker
Industry Representative

"Holly Millar"

Holly Millar
Industry Representative

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