



**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: ROBERT MICHAEL SMYLSKI

DECISION

Hearing: May 22, 2007 at Calgary, Alberta

Hearing Panel Decision: July 13, 2007

Hearing Panel:

Alan V.M. Beattie, Q.C. - Chair
Anneke Findlay - Industry Representative
Patricia Kloepfer - Industry Representative

Counsel:

For the MFDA
Maria Abate

For the Respondent
Kenneth P. Reh

Appearing:

(The Respondent did not attend.)

Present:

Yvette MacDougall - MFDA Hearings Coordinator
Allison Howse - Investigation, MFDA
Anne Dyer - Administrative Coordinator, MFDA

HEARING PANEL DECISION

(SETTLEMENT AGREEMENT)

A Settlement Agreement was entered into dated February 28, 2007 between Robert Smylski (“the Respondent”) and the Mutual Fund Dealers Association of Canada (“the MFDA”) pursuant to the MFDA’s By-law No. 1, Section 24.4.

In the Settlement Agreement the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined as an Approved Person of the MFDA, pursuant to ss.20 and 24.1.1 of By-Law No. 1.

At the commencement of the Hearing, the Hearing Panel granted a joint motion by Counsel to move the proceedings “in camera”.

AGREED FACTS

The Settlement Agreement includes the following agreed facts:

Registration History

From December 13, 2001 to March 24, 2005, the Respondent was registered in Alberta and British Columbia as a mutual fund salesperson for Partners in Planning Financial Services Ltd. (“PIP”), a Member of the MFDA. PIP has been a Member of the MFDA since January 8, 2002.

On March 24, 2005, the Respondent was terminated for cause by PIP as a result of the events described herein. The Respondent is not currently registered in the securities industry in any capacity.

Prior to being registered as a mutual fund salesperson for PIP, the Respondent was registered in Alberta and British Columbia as a mutual fund salesperson with other mutual fund dealers dating back to 1984.

Sale of Securities Outside the Member

Between July 15, 2003 and March 18, 2005, while registered as a mutual fund salesperson with PIP, the Respondent participated in the sale of the securities of six issuers being Windmill Estates Ltd. - Mortgage & Ownership Units, Berkshire Real Estate Investment Trust Ltd., Venstar Hospitality Barrie Limited Partnership, WaveForm Energy Limited Partnership I, Lighthouse Pointe Apartments Limited Partnership and Riverside Manor Limited Partnership.

In total, the Respondent made 62 sales totalling \$2,440,640 CAD and made 7 sales totalling \$172,500 USD. Each of these securities was purportedly sold pursuant to an exemption under the *Securities Act (Alberta)*.

None of these transactions were carried on for the account of PIP or through the facilities of PIP, contrary to MFDA Rule 1.1.1(a).

The Respondent did not obtain the written consent of PIP and the Chief of Securities of Administration of the Alberta Securities Commission, contrary to s.41(2)(g) and 41(2)(h) of the *Securities Act (Alberta)* and ASC Policy 3.10.

On or about January 14, 2004, the Respondent signed an acknowledgement that he had read, understood and agreed to comply with PIP's Compliance and Policies & Procedures Manuals (the "PPM") as well as all "subsequent compliance updates/bulletins".

The PPM states: "Alberta mutual fund registrants are only permitted to sell approved prospectus filed mutual funds. The sale of any other product must first have been granted a specific exemption by the ASC."

In addition, the PPM provides a list of products that have received the appropriate ASC exemption. None of the products sold by the Respondent and listed (above) are included in the PPM.

On or about February 26, 2004, PIP issued Compliance Update 11/04 (the "Compliance Update"). The Compliance Update states:

Partners and it's [sic] representatives hold a restricted form of securities registration which limits our activity to the sale of prospectus filed mutual funds. Any activity outside of this requires the approval of Partners and a specific exemption from the ASC.

The Compliance Update also states:

To be perfectly clear, financial products including limited partnerships/debentures such as those offered by Venstar may not be sold by Partner's representatives under either the name of Partners, an insurance entity or some other related entity. This is against securities regulations and will not be tolerated. Please review your own practice to ensure you are not violating this rudimentary principle.

The Respondent participated in the sale of the Venstar product both before and after the Compliance Update.

CONTRAVENTIONS

(CONDUCT CONTRARY TO THE PUBLIC INTEREST)

The Settlement Agreement includes:

The Respondent admits that he engaged in securities related business that was not carried on for the account of PIP or through the facilities of the PIP, contrary to MFDA Rule 1.1.1(a).

The Respondent admits that he sold securities under a registration or prospectus exemption without first having obtained the written consent of PIP and the Chief of Securities of Administration of the Alberta Securities Commission, contrary to s.41(2)(g) and 41(2)(h) of the Alberta Securities Act and ASC Policy 3.10, thereby engaging the jurisdiction of the Regional Council to impose a penalty on the Respondent pursuant to s.s.24.1.1(h) of MFDA By-Law No.1.

TERMS OF SETTLEMENT

The Settlement Agreement includes:

The Respondent agrees to the following terms of settlement:

- (a) A permanent prohibition on the authority of the Respondent to conduct securities related business; and
- (b) A fine in the amount of \$5,000.

SUBMISSIONS OF COUNSEL

Ms. Abate, Enforcement Counsel for the MFDA, and Mr. Reh, Counsel for the Respondent, recommended acceptance of the Settlement Agreement by the Panel.

Ms. Abate made the following submissions on behalf of MFDA Staff:

1. The Hearing Panel should consider three issues in determining whether the proposed Settlement Agreement and penalties are appropriate:
 - a) Whether there is a reasonable likelihood that the conduct will be repeated;
 - b) Whether the conduct is such as to bring into question the integrity and reputation of the capital markets; and
 - c) The impact of the penalties on the Respondent.

M.C.J.C. Holdings and Cowpland (2002), 25 O.S.C.B. 1133 at p.5 (Ontario Securities Commission)

2. In determining whether the proposed penalties are appropriate, the Hearing Panel shall also take into account:

- (a) The protection of the investing public;
- (b) The integrity of the securities markets;
- (c) Specific and general deterrence;
- (d) The protection of the MFDA's membership, and
- (e) The protection of the integrity of the MFDA's enforcement processes.

Parkinson (2005) MFDA Ontario Regional Council, File No. 200501 at p.21

Tonnies (2005) MFDA Prairie Regional Council, File No. 200503 at p.22

3. The Hearing Panel should consider whether the Settlement Agreement is reasonable and in the public interest.

Investors Group Financial Services (2005) MFDA Ontario Regional Council, File No. 200401 at p.4

4. The penalties set out in the Settlement Agreement are within the reasonable range of appropriateness given the conduct of the Respondent in this case.

Investment Dealers Association and Clark (1999) I.D.A.C.D. No. 40 at p.3-4

Investment Dealers Association and Milewski (1999) I.D.A.C.D. No. 17 at p.11

5. The proposed penalties will deter future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants and foster public confidence in the mutual fund industry. By making the admissions contained in the Settlement Agreement and by cooperating fully with the MFDA, the Respondent has avoided the necessity of the MFDA conducting both a protracted investigation and a lengthy hearing at considerable additional expense to the MFDA, and ultimately to the membership of the MFDA. As an Approved Person, high standards of conduct are expected of the Respondent.

The Respondent has accepted responsibility for his conduct by cooperating fully with the MFDA and by entering into this Settlement Agreement.

Mr. Reh, in brief submissions recommending that the Settlement Agreement should be accepted, reiterated that it meets the objectives of the MFDA, that the lifetime prohibition will send a strong message and that the Respondent cooperated fully to avoid a long and costly investigation and hearing.

DECISION

For all the reasons stated by Counsel (above) we confirm our decision, given at the conclusion of the Hearing, that the Settlement Agreement is accepted and we all signed an Order to that effect. In our view the permanent prohibition of the Respondent to conduct securities related business while in the employ of, or associated with, any MFDA Member, and the fine of \$5,000.00, falls within the reasonable range established in the decisions. Having regard to the cooperation of the Respondent in the investigation and in entering into the Settlement Agreement, and avoiding a protracted investigation and hearing, we are persuaded that a fine of \$5,000.00 is not inappropriate in this case.

Dated: July 13, 2007

“Alan V.M. Beattie”

Alan V.M. Beattie, Q.C. - Chair

“Anneke Findlay”

Anneke Findlay - Industry Representative

“Patricia Kloepfer”

Patricia Kloepfer - Industry Representative

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