



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

FILE NO. 200802

IN THE MATTER OF A DISCIPLINARY HEARING

PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1

OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Patrick Dennis Sullivan

REASONS FOR DECISION

Heard August 6, 2008 at Vancouver, B.C.

Hearing Panel of the Pacific Regional Council:

Stephen D. Gill, Chair

Susan Schulze, Panel Member

Sharon Moskalyk, Panel Member

Appearances:

Jason Bennett)	For the Mutual Fund Dealers
)	Association of Canada
David Lunny)	Counsel for Patrick Dennis Sullivan

REASONS

On July 25, 2008, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to Section 24.1 of By-Law No. 1

in respect of a disciplinary proceeding commenced against Patrick Dennis Sullivan (“Sullivan” or the “Respondent”). A hearing panel (the “Hearing Panel”) of the Regional Council of the Pacific Region of the MFDA was convened with respect to the disciplinary proceeding, and a hearing date of August 6, 2008 was set.

The Respondent entered into a Settlement Agreement with staff of the MFDA, dated July 25, 2008 (the “Settlement Agreement”) in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to Section 24.1 of By-Law No. 1.

The Hearing Panel convened on August 6, 2008, and at the commencement of the proceedings, pursuant to a joint motion by staff and counsel for the Respondent, ordered the proceedings to be conducted “in camera” until the decision of the Panel on the Settlement Agreement was known.

The Hearing Panel had carefully reviewed the Settlement Agreement, a copy of which had been provided to them prior to the commencement of the hearing. Counsel for the Association reviewed the provisions of the Settlement Agreement and in particular the Agreed Facts and Joint Settlement Recommendation. Counsel for the Association emphasized that Mr. Sullivan had been fully cooperative during their investigation. Counsel also noted there had been considerable negotiation between the parties, in order to reach the proposed Settlement.

Counsel for the Association reviewed the Agreed Facts set forth in the Settlement Agreement, including the fact that the Respondent is 60 years of age, and has been engaged in the provision of financial services for 37 years. The Respondent has never been the subject of disciplinary action, and counsel for the Association

advised that there had been no complaints, from clients, with respect to the Respondent, the Respondent's corporation Patrick Sullivan & Associates, or in respect of All Island Equity Mortgage Investment Corporation ("AIEMIC"). He advised that their investigation indicated that the Respondent was highly regarded, and had an excellent reputation.

As is set forth in the Agreed Facts in the Settlement Agreement, the Respondent disclosed his involvement in AIEMIC, and the member firm, IQON, knew of his interest and involvement. In the result, the Respondent agreed to restrict his involvement in AIEMIC to acting as a director and member of its management committee, and gave an undertaking in which he agreed that he would "not participate in or initiate any activities relative to the sale, promotion or solicitation of business or investments in or on behalf of (AIEMIC)". However, as is clear by the Agreed Facts, the Respondent became increasingly involved in the sale of AIEMIC between May 29, 1998 and the Spring of 2006.

In August, 2003 the Respondent and IQON considered re-opening the matter of the undertaking with the BC Securities Commission with a view to revising its terms, as the Respondent's involvement with AIEMIC led to him becoming non-compliant with his undertaking. Unfortunately, the matter was not pursued. The Respondent ceased to be registered as an Approved Person of IQON, or any other member of the MFDA effective October 16, 2006. We were advised, in submissions, that this was as a result of the Respondent and his lawyer addressing the problem, and he then became registered with the Investment Dealers Association of Canada, on or about October 24, 2006. We were advised, in submissions, that AIEMIC was able to become registered, and that the process was time-consuming and expensive.

The Hearing Panel heard submissions from counsel for the Association as to the terms of the settlement, and with respect to the appropriateness of the penalty. We also heard submissions from counsel on behalf of Mr. Sullivan.

Following submissions, the Panel retired to consider the submissions, the Settlement Agreement, and relevant authorities. The Panel then reconvened the Hearing, and the Hearing Panel unanimously concluded that it was appropriate to accept the Settlement Agreement and the Order was made. The in camera hearing order was vacated.

With reference to the applicable law, the Hearing Panel noted that in past cases MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

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

- (g) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

Re Leer, [2007] MFDA Pacific Regional Counsel, File No. 200710, p.2-3;

Investors Group Financial Services (Re), MFDA Ontario Regional Counsel, File No. 200401 at p.2-4.

Zollo (Re), [2007] MFDA Ontario Regional Council; File No. 200610 at pp. 2-3.

In the opinion of the Hearing Panel, each of these factors is dealt with appropriately by the Settlement Agreement.

With respect to the penalty, the Hearing Panel accepts that at law the penalties set out in the Settlement Agreement should be considered acceptable provided they are within the reasonable range of appropriateness given the conduct of the Respondent:

Clark (Re), [1999] I.D.A.C.D. No. 40 at p. 3

Milewski (Re) [1999] I.D.A.C.D. No. 17 at p. 10.

Having considered all the matters set forth in the Settlement Agreement, the Hearing Panel considers the penalties in the Settlement Agreement, namely the fine of \$30,000 and costs of \$5,000, are acceptable, and within the reasonable range in the circumstances of this case. In our view, it is important to appreciate that the Respondent has been active in the securities industry for 37 years, and has no past disciplinary history, or any history of complaints. There is no indication of any harm to the public, or the industry generally. The misconduct arose from an unusual set of circumstances, and the penalty will deter future misconduct by the Respondent, and deter others from engaging in similar misconduct.

For these reasons, the Hearing Panel has accepted the Settlement Agreement and has signed the order to implement the Settlement Agreement.

These Reasons can be signed in counterpart.

Dated at Vancouver, British Columbia, this 11th day of August, 2008.

“Stephen D. Gill”

Stephen D. Gill, Chair

“Susan Schulze”

Susan Schulze, Panel Member

“Sharon Moskalyk”

Sharon Moskalyk, Panel Member