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: Anastasios (Tom) Terzis

Heard: September 10, 2018 in Toronto, Ontario
Decision: September 10, 2018
Reasons for Decision: January 25, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall, QC	Chair
Linda J. Anderson	Industry Representative
Robert Christianson	Industry Representative

Appearances:

Lyla Simon	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Greg Temelini	)	Counsel for the Respondent
Anastasios (Tom) Terzis	)	Respondent, in person

Introduction

1. By Notice of Settlement Hearing dated August 1, 2018, a Hearing Panel of the Central Region of the Mutual Fund Dealers Association of Canada ("MFDA") was convened on September 10, 2018 to consider whether, pursuant to Section 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept the Settlement Agreement dated July 30, 2018 ("Settlement Agreement") entered into between Staff of the MFDA and Anastasios (Tom) Terzis ("Respondent").

2. The Notice of Settlement Hearing set out the following allegations of contraventions by the Respondent of the By-laws, Rules or Policies of the MFDA, specifically that he:

a) from 2013 to 2015, engaged in securities related business which was not carried on for the account of the Member or conducted through its facilities by recommending, selling, facilitating the sale of, and/or making referrals in respect of exempt market investments to approximately 41 clients totaling approximately $4,748,000, contrary to the Member's policies and procedures, MFDA Rules 1.1.1, 2.1.1, 2.4.2, 2.5.1, and 1.1.2, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103;

b) from 2013 to 2015, engaged in outside activity which was not disclosed to and approved by the Member, by recommending, selling, facilitating the sale of, and/or making referrals in respect of the sale of exempt market investments to approximately 41 clients totaling approximately $4,748,000, contrary to the Member's policies and procedures, MFDA Rules 1.3[1], 2.1.1, 2.4.2, 2.5.1 and 1.1.2, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103;

c) from 2013 to 2015, referred clients to two individuals, as well as directly to the investment entities, to purchase investments outside the Member, and received approximately $334,880 in commissions or referral fees for doing so, thereby participating in unapproved referral arrangements to which the Member was not a party, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1,

[1] Formerly MFDA Rule 1.2.1(c).

2.4.2, 2.5.1 and 1.1.2, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103; and

d) from 2013 to March 18, 2016, when his registration was terminated, misled the Member with respect to his knowledge of and involvement in undisclosed and unapproved outside activity, being referring clients to purchase securities outside the Member, contrary to MFDA Rule 2.1.1.

3. In Part VI of the Settlement Agreement the Respondent, in paragraph 38, admits that:

i. from 2013 to 2015, he engaged in securities related business which was not carried on for the account of the Member or conducted through its facilities by recommending, selling, facilitating the sale of, and/or making referrals in respect of exempt market investments to approximately 41 clients totaling approximately $4,748,000, contrary to the Member's policies and procedures, MFDA Rules 1.1.1, 2.1.1, 2.4.2, 2.5.1, and 1.1.2, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103;

ii. from 2013 to 2015, he engaged in outside activity which was not disclosed to and approved by the Member, by recommending , selling, facilitating the sale of, and/or making referrals in respect of the sale of exempt market investments to approximately 41 clients totaling approximately $4,748,000, contrary to the Member's policies and procedures, MFDA Rules 1.3[2], 2.1.1, 2.4.2, 2.5.1 and 1.1.2, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103;

iii. from 2013 to 2015, he referred clients to two individuals, as well as directly to the investment entities, to purchase investments outside the Member, and received approximately $334,880 in commissions or referral fees for doing so, thereby participating in unapproved referral arrangements to which the Member was not a party, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 2.4.2, 2.5.1 and 1.1.2, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103; and

[2] Formerly MFDA Rule 1.2.1(c)

iv. from 2013 to March 18, 2016, when his registration was terminated, the Respondent misled the Member with respect to his knowledge of and involvement in undisclosed and unapproved outside activity, being referring clients to purchase securities outside the Member, contrary to MFDA Rule 2.1.1.

4. In paragraph 39 of the Settlement Agreement, the Respondent agreed to the following terms of settlement:

i. the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member commencing from the date of the final Order herein, pursuant to s. 24.1.1(e) of By-law No. 1;
ii. the Respondent shall pay a fine in the amount of $40,000, pursuant to s. 24.1.1(b) of By-law No. 1;
iii. the Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of By-law No. 1; and
iv. the Respondent shall attend in person on the date scheduled for the MFDA settlement hearing.

5. After considering the Settlement Agreement, along with the submissions made by counsel for the MFDA, which were supported by counsel for the Respondent, the Hearing Panel unanimously accepted the Settlement Agreement.

Settlement Agreement and Agreed Facts

6. The additional portions of the Settlement Agreement which contain agreed facts which are relevant to these Reasons for Decision are quoted in the following:

> **IV. AGREED FACTS**
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> **Registration History**
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> 6. From January 30, 2002 to March 18, 2016, the Respondent was registered in Ontario as a dealing representative with IPC Investment Corporation Inc. ("**IPC**" or the "**Member**"), a Member of the MFDA.

7. At all material times, the Respondent carried on business from a branch located in Toronto, Ontario.

Misconduct

8. In or about 2013, the Respondent learned of an investment known as Greybrook Realty Partners ("**Greybrook**"), a real estate limited partnership investment.

9. The Respondent advised Approved Person MG ("**MG**")[3] and an individual named DP of the existence of Greybrook, and from 2013 to 2015, the Respondent referred some of his IPC clients to MG and DP, who acted as intermediaries as between the Respondent and Greybrook, in order to have the Respondent's clients invest in Greybrook through MG and DP.

10. In or about 2013, the Respondent learned from DP of an investment known as Fortress Realty Development ("**Fortress**"), a syndicated mortgage investment. From 2013 to 2015, the Respondent referred some of his IPC clients to MG and DP, who acted as intermediaries as between the Respondent and Fortress, in order to have the Respondent's clients invest in Fortress through MG and DP.

11. During the same time period, the Respondent also referred some of his IPC clients directly to Greybrook and Fortress (together, the "**Investments**"), in order to have the clients purchase the investments directly.

12. From 2013 to 2015, the Respondent recommended, sold, facilitated the sale of, and/or made referrals in respect of the sale of Greybrook to approximately 29 of his clients totaling investment in the amount of approximately $2,748,000.

13. From 2013 to 2015, the Respondent recommended, sold, facilitated the sale of, and/or made referrals in respect of the sale of Fortress to approximately 12 of his clients totaling investment in the amount of approximately $2 million.

14. For referring his clients to invest in the Investments (whether via MG and DP, or directly), the Respondent received commissions or referrals fees, as follows:

- 6% of the approximately $2,748,000 invested by approximately 29 clients in Greybrook; and
- 8.5% of the approximately $2 million invested by approximately 12 clients in Fortress.

15. In some instances, the clients made redemptions in their mutual fund accounts in order to invest in the Investments.

[3] MG became registered as an MFDA dealing representative on November 19, 2015, and was not yet registered at the material time.

16. The Respondent personally invested $25,000 in Fortress.

17. The Respondent did not disclose to IPC that he was recommending, selling, facilitating the sale of, and/or making referrals in respect of the sale of the Investments to clients.

18. IPC did not approve the Investments for sale to its clients by its Approved Persons, including the Respondent.

19. None of the purchases of the Investments by clients were carried on for the accounts or facilities of IPC.

20. The Respondent also did not disclose to IPC that, from 2013 to 2015, he had referral arrangements with MG and DP, and that IPC was not a party to the referral arrangements.

21. None of the referral fees the Respondent received from Approved Person MG or DP flowed through the books and records of IPC.

Contravention #1 – Securities Related Business

22. At all material times, IPC's policies and procedures required that:

- Approved Persons could only offer IPC approved products for sale;
- All products were required to be sold through IPC; and
- All securities related business was required to be conducted through the Member, and Approved Persons were prohibited from selling or advising on any investments that would be considered securities through any entity other than the Member.

23. As described above, from 2013 to 2015, the Respondent engaged in securities related business which was not carried on for the account of the Member or conducted through its facilities, by recommending, selling, facilitating the sale of, and/or making referrals in respect of the Investments to approximately 41 clients totaling approximately $4,748,000.

Contravention #2 – Undisclosed and Unapproved Outside Activity

24. At all material times, IPC's policies and procedures required its Approved Persons to disclose to, and obtain approval from, the Member in order to engage in any outside activities.

25. To the extent any of the Respondent's activities with respect to the sale of the Investments as described above do not constitute securities related business, then the Respondent had and continued in another gainful occupation that was not disclosed to

and approved by IPC by recommending, selling, facilitating the sale of, and/or referring clients to purchase the Investments.

Contravention #3 – Undisclosed and Unapproved Referral Arrangement

26. At all material times, IPC's policies and procedures required that its Approved Persons could only participate in IPC approved referral arrangements, and all products were required to be sold through IPC. IPC Approved Persons were not permitted to have any other direct or indirect referral arrangement with any other parties.

27. As described above, between 2013 and 2015, the Respondent referred his IPC clients to invest in the Investments (whether via MG and DP, or directly), and received commissions or referral fees in the amount of approximately $334,880 for referring clients to invest in the Investments, none of which was disclosed to or approved by IPC.

28. By virtue of the forgoing, the Respondent participated in an unapproved referral arrangement to which the member was not a party.

Contravention #4 – Misleading the Member

29. IPC required its Approved Persons to periodically complete various documents regarding compliance with MFDA Rules as well as with the Member's policies and procedures.

30. In or about 2015 to 2016, the Respondent completed an IPC *Annual Compliance Questionnaire* and provided the following responses:

Date	Question	Response
March 2015	"Do you want to disclose a new outside business activities, or volunteer service?"	"No"
February 2016	"Please disclose any outside business activities. Examples include but are not limited to, volunteer/community service, owned wholly/partially holding corporations, insurance sales"	"No"
March 2016	"Have you sold exempt products such as but not limited to hedge funds, pooled funds, private mortgage securities?"	"No"
March 2016	"If engaging in Outside Business Activities (OBA's) do you always provide clients with an OBA Disclosure Form?"	"N/A, I do not have any Outside Business Activities"
	"Do you have any agreements in place (written or verbal) where you provide or receive compensation for a referral?"	"Yes – BMO and Manulife through IPC"

Date	Question	Response
	"Have you sold or do you promote any investments other than mutual funds (offered by simplified prospectus), GICs and if you are life licensed, segregated funds and other insurance products?"	"No"

31. By submitting false responses to the Member's compliance questionnaires, the Respondent misled the Member with respect to his knowledge of and involvement in undisclosed and unapproved outside activity, being referring clients to purchase securities outside the Member.

V. ADDITIONAL FACTS

32. Staff did not receive any client complaints regarding this matter. Staff is aware of one client complaint to the Member; however, the client subsequently received his investment principal back from Fortress, and declined to speak with Staff. Staff has no evidence that any clients suffered any losses as a result of investing in the Investments.

33. The Respondent fully understands the seriousness of his actions. At the age of 58 years old, the Respondent will have to find other employment to support his family.

34. The Respondent cooperated with the MFDA's investigation into his conduct.

36. The Respondent has no previous disciplinary history.[4]

37. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

Reasons and Analysis

7. It is now well established that settlements, such as the one before the Hearing Panel, can serve the objective of protecting the public interest. That of course is the primary goal of securities regulators such as the MFDA.

> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557

8. It is also well established that the test for determining whether to accept a settlement agreement is different than that which is applied when a hearing panel is determining a contested case. As was stated in *Clark (Re):*

[4] There was no paragraph 35 in the Settlement Agreement.

> In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. As has been said: "The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made."
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> *Clark (Re),* [1999] I.D.A.C.D. No. 40

9. When determining whether it would be appropriate to accept a proposed settlement, MFDA hearing panels customarily take into consideration whether the settlement:

i. Would be in the public interest and whether the penalty imposed will protect investors;
ii. Is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
iii. Addresses the issues of both specific and general deterrence;
iv. Will prevent the type of conduct described in the Settlement Agreement from occurring again in the future; and
v. Will foster confidence in the integrity of the Canadian capital markets and the MFDA, and in the regulatory process itself.

Sterling Mutual Inc. (Re), 2016 LNCMFDA 77 at paras 13 and 14, Reasons for Decision of the MFDA Central Regional Council dated June 27, 2016

10. In previous MFDA cases, when evaluating whether the penalties proposed in a settlement agreement should be accepted, hearing panels have also taken into account additional factors. Ones which are particularly relevant to the present case are:

i. The seriousness of the contraventions admitted to by the Respondent;
ii. The Respondent's past conduct, experience in the capital markets and disciplinary history;

iii. Whether the Respondent recognizes that the conduct was improper and has demonstrated remorse;

iv. The harm suffered by investors as a result of the Respondent's conduct;

v. Whether acceptance of the settlement agreement would be in the public interest as the penalties agreed upon will protect investors and are reasonable and proportionate having regard to the conduct of the Respondent;

vi. Previous decisions in similar circumstances.

Sterling Mutual Inc. (Re), supra at paras 13 and 14.

11. The Respondent's conduct in this case was not in any way ambiguous. There can be no doubt that it was entirely intentional. For well over two years, the Respondent referred IPC clients and others to Greybrook and Fortress in order that they could invest in these companies. Not only did the Respondent not advise the Member of these referrals, but he falsely asserted in writing on multiple occasions that he was not involved in any such outside investments or other unauthorized activities.

12. The Respondent's transgressions were not trivial. The value of the investments totaled approximately $4,748,000 and involved 41 clients.

13. Further, from 2013 to 2015, unknown to the Member, the Respondent received approximately $334,880 in commissions or referral fees from his participation in the unapproved referral arrangements to which the Member was not a party.

14. The Respondent's conduct was exactly the kind of behaviour that the regulatory regime was designed to prevent. The Respondent has now acknowledged, in effect, that he knew these rules but determined to disobey them for his own profit. He deserves no sympathy whatsoever for his permanent expulsion from the MFDA, a penalty that was fully warranted by his behaviour.

15. In a case such as this, where the Respondent's conduct was so egregiously in breach of his duties, both to the Member but also those he owed to his regulator and to the investing public, his prior record and his cooperation with the MFDA carry little weight with respect to choosing the appropriate sanctions. It clearly was in his self-interest to settle this case at as little cost as possible.

A permanent prohibition was virtually inevitable, a fact which becomes clear from a review of the table below which was taken from the MFDA Penalty Guidelines[5].

BREACH	PENALTY TYPES & RANGE	SPECIFIC FACTORS TO CONSIDER
Rule 1.1.1 Securities Related Business/Outside Activity (page 14-15)	• Minimum fine of $10,000. • Write or rewrite course. • Period of increased supervision. • Suspension. • Permanent prohibition in egregious cases.	1. Magnitude (in size and value) of outside business activity 2. Number of clients affected 3. Magnitude of client losses 4. Suitability of outside business activity if involving securities 5. Compensation received by the Respondent 6. Any personal interest of the Respondent in outside business activity 7. Whether the Respondent had honest but mistaken belief that proper approval obtained 8. Legality of outside activity 9. Whether outside activity resulted directly or indirectly in injury to clients of the Member and, if so, the nature and extent of the injury 10. Whether the marketing and sale of the product or service could have created the impression that the Member had approved the product or service 11. Whether the Respondent misled the Member about the existence of the outside activity or otherwise concealed the activity from the Member
Rule 2.1.1 Standard of Conduct (page 27)	• Minimum fine of $5,000. • Write or rewrite course. • Suspension. • Permanent prohibition in egregious cases.	1. Nature of the circumstances and conduct 2. Number of individuals affected 3. Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute
Rule 2.4.2 Referral Arrangements (page 20)	• Minimum fine of $10,000. • Write or rewrite course. • Period of increased supervision. • Suspension. • Permanent prohibition in egregious cases.	1. Magnitude of referrals (size and value) 2. Number of clients affected 3. Magnitude of client losses (if any) 4. Suitability of referrals if involving securities 5. Compensation received by the Respondent 6. Any personal interest of the Respondent in referral 7. Existence of client complaints 8. Legality of referral

[5] The Guidelines are not mandatory or binding on a hearing panel but do provide a basis upon which discretion can be exercised consistently and fairly.

16. As was stated earlier, this was without doubt an egregious case. The Respondent's conduct puts him on the wrong side of virtually all the "Specific Factors to Consider" column in the foregoing table.

17. The agreed fine of $40,000 is well in excess of the total minimum fines for the contraventions. That said, the fine is far short of the total commissions of $334,880 the Respondent received. However, the Hearing Panel concluded that while it might be close to the edge, the quantum of the fine did fit within a zone of reasonable appropriateness, particularly when tax considerations are taken into account in making the comparison, the fine presumably being paid with after tax dollars and the commission receipts total being before tax.

Conclusion

18. It was for the foregoing reasons that the Hearing Panel accepted the Settlement Agreement and issued an order dated September 10, 2018 to that effect.

DATED this day of January, 2019.

"John Lorn McDougall"
John Lorn McDougall, QC
Chair

"Linda J. Anderson"
Linda J. Anderson
Industry Representative

"Robert Christianson"
Robert Christianson
Industry Representative

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