



**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: Fabio Nicola Ventolini**

Heard: February 21, 2018 in Toronto, Ontario

Decision: February 21, 2018

Reasons for Decision: March 19, 2018

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC

Chair

Colleen Waring

Industry Representative

Joe Yassi

Industry Representative

Appearances:

David Halasz

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Counsel for the Mutual Fund Dealers  
Association of Canada

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A. Benson Forrest

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Counsel for the Respondent

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Fabio Nicola Ventolini

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Respondent, in person

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## **Background**

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on Wednesday, February 21, 2018. The full Settlement Agreement, dated December 1, 2017 entered into between Staff of the MFDA and Fabio Nicola Ventolini (“Mr. Ventolini” or the “Respondent”) is available on the MFDA website. Mr. Ventolini was represented by counsel and appeared in person.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the February 21, 2018 hearing, with reasons to follow. These are our reasons for the decision.

3. Since July 1997, the Respondent has been registered as a mutual fund sales person (now known as a dealing representative) with IPC Investment Corporation (“IPC”), a Member of the MFDA. At all material times, the Respondent carried on business in the Toronto area.

4. The alleged conduct concerned improperly seeking, without the Member’s knowledge or permission, remuneration for himself for transferring deceased clients’ mutual fund accounts. All fees for services charged to clients pertaining to Member business are required to be paid to IPC and not to the Respondent and recorded on the books and records of IPC. In fact, the Member does not charge for this service.

## **Settlement Agreement**

5. The Respondent admits in paragraph 4 of the Settlement Agreement that:

“Between July 2013 and July 2015, he directly or indirectly through a company he controlled, solicited and accepted remuneration or service fees outside the Member from at least four clients for Member business for which he would also receive remuneration from the Member for the same activities, contrary to MFDA Rule 2.1.4 and the standard of conduct prescribed in MFDA Rule 2.1.1.”

6. The terms of settlement are set out in paragraph 5 of the Settlement Agreement. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$7,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs of this proceeding in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.1.4; and
- d) the Respondent will attend in person on the date set for the Settlement Hearing.

## **Facts**

7. Between July 2013 and July 2015, the Respondent, through a business he operated under the name Comprehensive Financial Planning Group, solicited from six clients, and accepted from four clients, service fees outside IPC that the Respondent charged to transfer a deceased client's mutual fund accounts at IPC to the living spouse.

8. The transfer of mutual fund accounts from a deceased client to a living spouse is Member business and the Respondent was not permitted to collect the estate transfer fees from clients.

9. The Respondent issued invoices to six clients in respect of estate transfer fees totalling \$3,570.90 and collected fees totaling \$2,383.80 from four of the clients.

10. One of the clients who received an invoice complained to the Member, who investigated the Respondent's conduct and directed the Respondent to either repay the clients or withdraw the unpaid invoices, which the Respondent did.

11. The Respondent had received or was entitled to receive commission and/or trailer fees which compensated him for transferring the account from a deceased client to a living spouse. Accordingly, the Respondent increased the amount of compensation he received for conducting Member business.

## **The Law**

12. MFDA Hearing Panels have found that it is contrary to MFDA Rules for an Approved Person to obtain remuneration or fees from clients in respect of business conducted on behalf of the Member: see *Re Fried* (File No. 201242) and *Re Campbell* (File No. 200805).

13. The Respondent admitted in Paragraph 4 of the Settlement Agreement that he acted contrary to MFDA Rules 2.14 and 2.1.1 when he solicited and accepted remuneration or service fees outside the Member from at least four clients for Member business for which he would also receive remuneration through commissions and trailer fees from the Member for the same activities.

## **Acceptance of Settlement Agreement**

14. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

15. The conduct in this case was serious. It was contrary to the Member's policies and procedures. The Respondent knew that getting this extra remuneration was wrong and did not disclose it to the Member. The matter came to light as a result of a client complaint, which led to the Respondent repaying the amounts collected from clients.

16. The Respondent reimbursed the clients and so there was therefore no harm to the clients.

17. Moreover, the Respondent has been in the securities industry since 1997 and has never been the subject of a disciplinary proceeding.

18. The penalty in the present case of \$7,500 will provide some measure of specific deterrence to the Respondent and general deterrence to others. The monetary penalty is consistent with the MFDA penalty guidelines, which provide for a minimum fine of \$5,000 and is also not out-of-line with the cases cited to us by counsel. See *Re Fried* (File No. 201242) and *Re Campbell* (File No. 200805).

19. Further, the Respondent fully cooperated with the MFDA's investigation and by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct, recognizes its seriousness, and has exhibited remorse. And by entering into the Agreement, the Respondent saved the MFDA the time, resources and expense associated with conducting a full hearing of the allegations.

20. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.”

21. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

22. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: “It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness.” There are many similar statements by MFDA Panels stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: “A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the

penalty as clearly falling outside a reasonable range of appropriateness.” This is particularly so, we should add, when experienced counsel have been the negotiators.

23. The penalty agreed to in this case clearly falls within “a reasonable range of appropriateness.”

24. For the above reasons we accepted the Settlement Agreement.

**DATED** this 19<sup>th</sup> day of March, 2018.

“Martin L. Friedland”

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Martin L. Friedland, CC, QC  
Chair

“Colleen Waring”

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Colleen Waring  
Industry Representative

“Joe Yassi”

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Industry Representative

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