



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: Robert Henry Young

Heard: April 26, 2017, in Halifax, Nova Scotia
Reasons for Decision: July 7, 2017

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Ann C. Etter	Industry Representative
Darrell Bing	Industry Representative

Appearances:

Michelle Pong)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Greg Hardy)	Counsel for the Respondent
)	
)	
Robert Henry Young)	Respondent, In Person

A. THE ALLEGATION

1. By Notice of Hearing, dated the 13th day of October, 2016, the Mutual Fund Dealers Association of Canada (“MFDA”) made the following Allegation against Robert Henry Young (“Respondent”):

Allegation #1: Between 2003 and 2013, the Respondent engaged in outside business activities that were not disclosed to, and approved by, the Member by acting as a director, principal and/or directing mind of two corporations, thereby engaging in conduct contrary to the Member’s policies and procedures, and MFDA Rules 1.2.1(c)(now MFDA Rule 1.3), 2.5.1, 1.1.2 and 2.1.1.

B. HISTORY OF PROCEEDINGS

2. The Respondent was served with the Notice of Hearing on October 21, 2016.

3. The Respondent served and filed a Reply to the Notice of Hearing on November 3, 2016.

4. The First Appearance took place on November 30, 2016, via teleconference, before a public representative of a Regional Council, acting on behalf of the Atlantic Regional Council (“Hearing Panel”), pursuant to section 19.13(b) of MFDA By-law No. 1.

5. After hearing the submissions of Counsel for Staff of the MFDA (“Staff”) and Counsel for the Respondent, a procedural Order was made. The Hearing on the Merits was scheduled to take place on April 25 and 26, 2017, at a specified time and place in Halifax, Nova Scotia.

6. On April 18, 2017, a Settlement Agreement was entered into between Staff and the Respondent.

7. April 19, 2017, the MFDA announced that a settlement hearing would take place on April 26, 2017, at the time and place in Halifax, Nova Scotia, which had been set out in the Order of November 30, 2016.

C. THE SETTLEMENT HEARING

8. At the commencement of the proceedings, we brought to the attention of the parties the provisions of Rule 15 of the MFDA Rules of Procedure which provides, in part, that:

“Except where a settlement is reached after the commencement of the hearing of a proceeding on its merits, a Hearing Panel shall not consider a Settlement Agreement unless at least 10 days’ notice of the settlement hearing has been given by the Corporation in the same manner as a notice of penalty pursuant to section 24.5 of MFDA By-law No. 1”

9. While the Settlement Agreement, which we were being asked to consider, had been prepared in accordance with the provisions of section 24.4 of MFDA By-law No. 1, the announcement of the Settlement Hearing on April 19, 2017, did not occur more than 10 days before the hearing.

10. After hearing submissions from Staff, we determined that the Settlement Hearing could proceed.

11. We note that Rule 1.3 of the Rules of Procedure provides that:

“These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness.”

12. Rule 2.2 provides that:

“2.2 Extension or Abridgment of Time

(1) The time for the performance of any obligation under these Rules may be extended or abridged:

(a) by a Panel, at any time on such terms as it considers appropriate;

(b) on consent of the parties prior to the expiration of the prescribed time.”

13. On October 13, 2016, the MFDA had issued a public Notice of Hearing detailing the Allegation against the Respondent. The Order of November 30, 2016, gave public notice of the time and place when proceedings relating to this Respondent would occur.

14. As the Settlement Hearing occurred on the second of the fixed dates, the public had more than 10 days’ notice of the date, time and place of the hearing, as well as sufficient information to identify the person involved and the general nature of the allegations which were the subject matter of the settlement. Consequently, in our view, it was in the public interest that this matter proceed.

15. This view is consistent with the position taken by a previous MFDA Hearing Panel.

In the Matter of Jennifer Lynn Killins, [2011] Hearing Panel of the Central Regional Council, MFDA File No. 201109, Reasons for Decision, dated February 9, 2012, at paras. 12 & 13.

16. The Hearing Panel granted a joint Motion by Counsel for Staff and Counsel for the Respondent to move the proceedings “in camera” while we considered the Settlement Agreement, as well as the written and oral submissions of Staff and the oral submissions of Counsel for the Respondent.

17. After a detailed review of the Settlement Agreement, as well as a consideration of the submissions of the parties, we unanimously concluded that it was in the public interest that the Settlement Agreement be accepted.

18. On April 26, 2017, the Hearing Panel executed an Order giving effect to the terms of the Settlement Agreement. At that time, we stated that we would provide written Reasons for our decision. These are those Reasons.

D. THE SETTLEMENT AGREEMENT

19. The salient portions of the Settlement Agreement are as follows:

“AGREED FACTS

Registration History

6. Between January 2003 and September 30, 2008, the Respondent was registered in Nova Scotia as a mutual fund salesperson (now known as a dealing representative¹) with AEGON Dealer Services Canada Inc. (“AEGON”), a former Member of the MFDA.

7. On September 30, 2008, AEGON amalgamated with Investia Financial Services Inc. (“Investia”), a Member of the MFDA, and thereafter operated under the Investia name. From September 30, 2008 to June 2009, the Respondent was registered in Nova Scotia as a mutual fund salesperson with Investia.

8. Between June 2009 and November 2012, the Respondent was registered in Nova Scotia as a mutual fund salesperson with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA.

9. The Respondent resigned from Quadrus on November 16, 2012.

10. At all material times, the Respondent conducted business in Dartmouth, Nova Scotia.

11. The Respondent is not currently registered in the securities industry in any capacity.

¹ On September 28, 2009 when National Instrument 31-103 came into force, the Respondent’s registration category was changed from mutual fund salesperson to dealing representative.

Outside Business Activities

East River Holdings

12. East River Holdings Limited (“ERH”) was a corporation incorporated pursuant to the laws of Nova Scotia, which operated as a boat yard and marina. ERH was incorporated in 2004 and became insolvent in 2012. In 2006, the numbered company 3113571 Nova Scotia Limited, owned by the Respondent’s spouse, became a shareholder of ERH.

13. From 2012 until it became insolvent in 2013, the boat yard and marina operated as East River Marine (“ERM”).

14. Between 2004 and at least December 12, 2009, the Respondent was a director of ERH.

15. On October 22, 2013, Justice P.J. Murray of the Nova Scotia Supreme Court determined in *RCBS Holdings Inc. v. East River Holdings Ltd.*, 2013 NSSC 410 that:

It is reasonably clear from the evidence that Robert Young is still a directing mind of the Company, East River. He had a key role in the refinancing and transferring of the Deed to the property up to and as recent as June of 2013.

This included financing to keep the Company and family enterprises running, which included being able to employ his son and pay Phillip’s salary, albeit a modest one. It is evident that East River, at some point, was “placed aside” and became less important in the family’s operations.

While Mr. Robert Young did not give evidence, it was apparent in the evidence that was given that he was actively working behind the scenes to direct the manner in which the financing was arranged and the Company was operated. From this, I draw an appropriate inference that he is still controlling the assets and making key decisions in respect of the Company.

16. At some point prior to July 7, 2006 while the Respondent was involved with ERH, an individual, RB, paid \$300,000 to ERH to acquire preferred shares.

17. On or about September 7, 2006, the Respondent signed a Promissory Note, together with ERH and the Respondent's son, PY, in the amount of \$57,500 payable to RB in respect of monies which RB had loaned to ERH. These monies were not paid to RB. Accordingly, on or about May 13, 2010, the Respondent signed, together with the Respondent's son, PY, an agreement with RB to pay monies owed under the terms of the Promissory Note. In November 2012, RB commenced a lawsuit against the Respondent, his son, PY and ERH.

18. In about 2009 (while the Respondent was involved with ERH), an individual, EC, paid \$250,000 to ERH to acquire preferred shares. ERH defaulted on its dividend payment obligations and EC commenced a lawsuit against ERH in October 2012.

19. The Respondent disclosed his activities with respect to ERH to his current employer at that time, Quadrus in 2012.

PYMC Sailing Centre

20. PYMC Sailing Centre Inc. ("PYMC") was a corporation incorporated pursuant to the laws of Nova Scotia. PYMC owned the land on which the boat yard and marina (described above) operated.

21. In 2003, the Respondent owned 40% of PYMC's shares.

22. In 2004, the Respondent sold 36% of PYMC's shares to 3113571 Nova Scotia Ltd., a corporation owned by the Respondent's spouse.

23. The Respondent states that until 2012, the Respondent continued to own 4% of PYMC's shares.

24. Between 2003 and 2004, the Respondent was a director and Chairman of the Board of PYMC.

25. On or about September 5, 2008, the Respondent signed, as guarantor of the debt, a Promissory Note in the amount of \$573,750 payable to an individual, EE, in respect of monies which EE had loaned to PYMC.

26. The Respondent did not disclose his activities with respect to PYMC to his Members, and his Members did not approve these activities.

CONTRAVENTIONS

27. The Respondent admits that, between 2003 and 2009, the Respondent engaged in outside business activities in relation to his involvement with two corporations which were not disclosed to or approved by, the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.2.1(c) (now MFDA Rule 1.3), 2.5.1, 1.1.2 and 2.1.1.

TERMS OF SETTLEMENT

28. The Respondent agrees to the following terms of settlement:

- a) A five year prohibition of the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, commencing on the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) The Respondent shall pay a fine in the amount of \$5,000, on or before June 30, 2017, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

- c) The Respondent shall pay costs in the amount of \$5,000, on or before the date set for the Settlement Hearing, pursuant to section 24.2 of MFDA By-law No. 1;
- d) The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 1.3, 2.5.1, 1.1.2 and 2.1.1; and
- e) The Respondent will attend in person on the date set for the Settlement Hearing.”

E. THE LAW RELATING TO SETTLEMENT AGREEMENTS

20. Section 24.4.3 of MFDA By-law No. 1 provides the Hearing Panel with only two options when considering a Settlement Agreement. The Panel must either accept or reject the Settlement Agreement. It does not have the power to modify or vary any part of it.

21. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As the Hearing Panel stated in *Professional Investments (Kingston) Inc.*:

“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.”

Professional Investments (Kingston) Inc. (Re), 2009 LNCMFDA 9, at para. 13.

22. Settlements do assist the MFDA in fulfilling its regulatory objective of protecting the public. They advance this objective by proscribing activities which are harmful to the public, while enabling the parties to reach a flexible remedy to address the interests of both the regulator and the Respondent.

British Columbia Securities Commission v. Seifert, 2007 BCCA 484 at para. 31.

23. Past MFDA Hearing Panels have set out a number of considerations which should be taken into account when determining whether a proposed settlement should be accepted. These include:

- a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty 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; and
- g) whether the settlement agreement will foster confidence in the regulatory process itself.

Investors Group Financial Services [2005] MFDA Ontario Regional Council, File No. 200401, Hearing Panel Decision dated October 16, 2004 at pp. 2-3.

24. The primary goal of securities regulation is the protection of the investor.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 (S.C.C.) at paras. 59 & 68.

25. Past MFDA Hearing Panels have also delineated a number of factors which should be considered when determining whether a proposed penalty is appropriate. These include:

- a) the seriousness of the allegations proved against the Respondent;
- b) the Respondent's past conduct, including prior sanctions;
- c) the Respondent's experience and level of activity in the capital markets;
- d) whether the Respondent recognizes the seriousness of the improper activity;

- e) the harm suffered by investors as a result of the Respondent's activities;
- f) the benefits received by the Respondent as a result of the improper activity;
- g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) previous decisions made in similar circumstances.

Re: *Headley (Re)*, 2006 LNCMFDA 3, at para. 85.

26. General deterrence is an important factor for hearing panels to take into account when determining an appropriate penalty. Penalties should discourage other registrants from engaging in the misconduct for which the Respondent is being disciplined.

27. The MFDA Penalty Guidelines, while not mandatory, are an additional source which Hearing Panels can refer to in determining the appropriateness of the proposed penalties.

F. CONSIDERATIONS IN THE PRESENT CASE

(i) Nature of the Misconduct

28. The Respondent has admitted that, between 2003 and 2009, he engaged in outside business activities in relation to his involvement with two corporations which were not disclosed to, or approved by, the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.2.1(c)(now MFDA Rule 1.3), 2.5.1, 1.1.2 and 2.1.1.

29. In our view, this misconduct is of a serious nature.

(ii) The Respondent's Past Conduct, Experience and Level of Activity in the Capital Markets

30. Between January of 2003 and his resignation on November 16, 2012, the Respondent was registered in Nova Scotia as a mutual fund salesperson.

31. The Respondent is not currently registered in the securities industry in any capacity.

32. A mitigating factor, in our view, is that the Respondent has not previously been the subject of a MFDA disciplinary proceeding.

(iii) The Respondent's Recognition of the Seriousness of his Misconduct

33. By entering into this Settlement Agreement, the Respondent has recognized the seriousness of his misconduct, has accepted responsibility for same and has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegation.

(iv) Investor Harm

34. Paragraphs 16, 17, 18 and 25 of the Settlement Agreement outline details of investor harm. However, in its written and oral submissions to the Hearing Panel, Staff's position was that there is no evidence of client harm resulting from the contraventions which were the subject matter of the Settlement Agreement.

(v) Previous Decisions Made in Similar Circumstances

35. In its written and oral submissions, Staff referred us to two Decisions to show that the penalty proposed in the Settlement Agreement falls within the range of appropriateness. These Decisions were:

- (a) *In the Matter of Brian Edward Mark Nerdahl*, [2010] Hearing Panel of the Central Regional Council, MFDA File No. 200806, Reasons for Decision, dated July 15, 2010.
- (b) *In the Matter of Paolo Abate*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201412, Reasons for Decision, dated September 4, 2015.

(vi) MFDA Penalty Guidelines

36. Staff provided the Hearing Panel with excerpts from the Penalty Guidelines dealing with “outside business activity”, “policies and procedures” and “standard of conduct”. While stressing that the Guidelines are not mandatory, Staff submitted that the proposed penalties are consistent with them.

G. DECISION

37. After a detailed consideration of the Settlement Agreement, the applicable law, the submissions of the parties, as well as the factors specific to the Respondent, we unanimously concluded that it was in the public interest that the Settlement Agreement be accepted.

H. PENALTIES IMPOSED

38. As a result of the acceptance of the Settlement Agreement, the following penalties were imposed upon the Respondent:

- (a) A five year prohibition of the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member shall be imposed and commence on the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

- (b) The Respondent shall pay a fine in the amount of \$5,000, on or before June 30, 2017, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (c) The Respondent shall pay costs in the amount of \$5,000, on or before the date set for the Settlement Hearing, pursuant to section 24.2 of MFDA By-law No. 1; and
- (d) The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 1.3, 2.5.1, 1.1.2 and 2.1.1.

39. 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*.

DATED this 7th day of July, 2017.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.
Chair

“Ann C. Etter”

Ann C. Etter
Industry Representative

“Darrell Bing”

Darrell Bing
Industry Representative