



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: M. Hershberg Capital Limited

Heard: October 17, 2011 in Toronto, Ontario
Reasons for Decision: November 8, 2011

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Edward Saunders, Q.C.
Anne Traczuk
Nick Pallotta

Chair
Industry Representative
Industry Representative

Appearances:

| | | |
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| Lyla Simon |) | For the Mutual Fund Dealers Association of |
| |) | Canada |
| Miles J. Hershberg |) | President, M. Hershberg Capital Limited |
| |) | |

1. This is a settlement hearing pursuant to Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). In 2008, MFDA staff conducted an investigation of the activities of M. Hershberg Capital Limited (the “Respondent”) which resulted in a notice of a disciplinary hearing in which three allegations of violations of the by-laws, rules and policies of the MFDA were made against the Respondent. In the course of preparing for the hearing, the MFDA staff and the Respondent reached an agreement which was reduced to writing, dated September 18, 2011 and executed by the parties (the “Settlement Agreement”). The purpose of this hearing is to determine under the by-laws of the MFDA whether the Settlement Agreement should be accepted.

2. Miles Jerrold Hershberg (“Hershberg”) was the owner, President and directing mind of the Respondent from July 1990 onward. The Respondent was registered as a mutual fund dealer and has been a Member of the MFDA since March 2002. On April 6, 2011, the Respondent on its own volition gave notice to the MFDA of its intention to resign from MFDA membership and the Respondent has since ceased to operate as a mutual fund dealer. Hershberg is not currently working in the securities industry.

3. The relevant facts are set out in Sections IV and V of the Settlement Agreement and need not be repeated here.

4. The Respondent has admitted that:

(a) from July 2004 to October 2008, it failed to ensure that trades in the accounts of clients were consistent with the clients’ documented KYC information in that purchase transactions of “medium/high” and “high” risk investments were made in accounts of clients who had a risk tolerance of “medium” recorded on their KYC forms, contrary to MFDA Rules 2.2.1 and 2.5.1;

(b) from July 2004 to May 2009, it engaged in discretionary trading in that trades were executed in client accounts:

(i) pursuant to limited trading authorizations but absent evidence of specific client instructions; and

(ii) several days after receiving client instructions for trades,

contrary to MFDA Rules 2.3.2, 5.1(b), and 2.1.1.; and

(c) from July 2004 to May 2009, it conducted trades for multiple family members' accounts when the Respondent had received trade instructions from only one person in the family who did not have trading authority over the other accounts, contrary to MFDA Rule 2.1.1.

5. There is no evidence that the Respondent received any benefit from its improper activities or that it had any ulterior motive in carrying them out. There are no outstanding client complaints made to the Respondent or to the MFDA regarding the Respondent or its Approved Persons. There is no other open or outstanding MFDA enforcement file regarding the Respondent.

6. The Respondent has agreed to pay:

(a) A fine in the amount of \$10,000 pursuant to Section 24.1.2(b) of MFDA By-Law No. 1; and

(b) Costs of the investigation and hearing in the amount of \$2,500 pursuant to Section 24.2 of By-law No. 1.

7. The agreed fine is on the low side but in our view is adequate having regard to the fact that the Respondent has ceased its business activities. Furthermore, the closing of the business means that the Respondent could not benefit from the assistance of a monitor.

8. Having reviewed the Settlement Agreement and the Submissions of the parties, we are of the view that the settlement falls well within the acceptable range dictated by the public interest. Accordingly, we accept the Settlement Agreement.

DATED this 8th day of November, 2011.

“Edward Saunders”

The Hon. Edward Saunders, Q.C.,
Chair

“Anne Traczuk”

Anne Traczuk,
Industry Representative

“Nick Pallotta”

Nick Pallotta,
Industry Representative