



**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: Worldsource Financial Management Inc.**

Heard: June 28, 2017 in Toronto, Ontario

Decision: June 28, 2017

Reasons for Decision: August 2, 2017

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth

Chair

Joseph Yassi

Industry Representative

Robert C. White

Industry Representative

Appearances:

Shelly Feld

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Counsel for the Mutual Fund Dealers

Maria Abate

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Association of Canada

)

David Di Paolo

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Counsel for the Respondent

Maureen Doherty

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## **BACKGROUND**

1. By Notice of Settlement Hearing dated May 10, 2017, a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Panel should accept a Settlement Agreement, dated May 8, 2017 (“Settlement Agreement”) entered into by Staff of the MFDA and the Respondent.

2. At the outset of the proceedings, the Panel considered a joint motion by Staff and the Respondent to move the proceedings “in camera”. The Panel granted that motion. The Panel then considered the provisions of the Settlement Agreement aided by submissions as to the applicable law which should guide the Panel in determining whether to accept or reject the Settlement Agreement.

### **Terms of Settlement Agreement**

3. In the Settlement Agreement, the Respondent agrees to the following:

- (a) the Respondent shall pay a fine in the amount of \$150,000;
- (b) the Respondent shall pay costs in the amount of \$20,000;
- (c) the Respondent shall in the future comply with MFDA Rules 2.1.1, 1.1.5, 2.1.4, 2.5.1 and MFDA Policies 2, 3 and 6;
- (d) a senior representative of the Respondent will attend in person, on the date set for the Settlement Hearing.

### **Contraventions**

4. After receiving a written report dated November 28, 2011 informing the Respondent of misconduct by Eagan, the Respondent failed to conduct a reasonable supervisory investigation concerning the allegations of misconduct or take such supervisory and disciplinary action as may

have been warranted by the results of such an investigation, contrary to MFDA Rules 1.1.5, 2.1.1, 2.1.4 and 2.5.1 and MFDA Policies 2 and 3.

5. After receiving a written report dated November 28, 2011, alleging that Eagan had engaged in misconduct, including unauthorized outside business activities involving will preparation, accepting powers of attorney and appointments as estate trustee for clients, processing unauthorized trades and account transfers, and engaging in unauthorized complaint handling, it failed to report these allegations to the MFDA, contrary to MFDA Rule 2.1.1 and MFDA Policy No. 6.

### **The Facts**

6. In the Settlement Agreement executed by all parties on the 8<sup>th</sup> day of May, 2017, Staff of the MFDA and the Respondent agreed to the existence of the following facts.

7. The Respondent is registered as a Mutual Fund Dealer in all 10 Canadian provinces and as an Exempt Market Dealer in the provinces of Ontario and Newfoundland and Labrador.

8. The Respondent became a Member of the MFDA on May 10, 2002.

### **Conrad Eagan – A Former Approved Person Of The Respondent**

9. From May 30, 2011 until his termination on August 16, 2012, Conrad Eagan (“Eagan”) was registered in Ontario, Alberta and Quebec as a mutual fund salesperson with the Respondent.

10. Prior to joining the Respondent, from October 1987 to May 24, 2011, Eagan had previously been registered in Ontario, Alberta and Quebec as a mutual fund salesperson with Desjardins Financial Security Investments Inc. (“Desjardins”), a Member of the MFDA.

11. A substantial portion of the misconduct described below occurred before Eagan was registered with the Respondent.

12. On February 2, 2016, an MFDA Hearing Panel found that between February 2007 and December 2014, which included the 14 month period that he was registered as a mutual fund salesperson with the Respondent, Eagan:

- (i) misappropriated monies from a number of clients and one individual who was not a client, contrary to MFDA Rule 2.1.1;
- (ii) borrowed monies from a client that he failed to repay or otherwise account for, which created a conflict of interest, contrary to MFDA Rule 2.1.4 and 2.1.1;
- (iii) acted as the executor of the estates of clients, contrary to MFDA Rules 2.3.1(a), 2.1.4 and 2.1.1;
- (iv) engaged in another gainful occupation not disclosed to and approved by his Member, by preparing wills for clients and other individuals, contrary to MFDA Rules 1.2.1(c) (now MFDA Rule 1.3) and 2.1.1;
- (v) provided a number of individuals with statements and documents he knew to be false, misleading or incorrect at the time and in the circumstances he made them, in order to deceive them as to the amounts and locations of their investments and monies, contrary to MFDA Rule 2.1.1; and
- (vi) failed to cooperate with the MFDA during its investigation, contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1.

### **Eagan's Activities As An Approved Person Of The Respondent**

13. On May 30, 2011, Eagan became registered as a mutual fund salesperson at the Respondent. During his time at the Respondent, Eagan's branch manager was PP.

14. PP and Eagan had previously worked together at Desjardins where PP was Eagan's licensed assistant for a period of at least 10 years.

15. On November 28, 2011, in his capacity as branch manager for Eagan, PP wrote to the Respondent and informed it of his concerns with respect to Eagan's activities (the "November 28, 2011 Letter"). In particular, PP informed the Respondent that:

- (a) Eagan had prepared wills and powers of attorney for mutual fund clients and other individuals in the past and had prepared a will for client YC during the previous month;
- (b) Eagan named himself as Executor or Manager of Trusts in the majority of the wills that he had prepared;
- (c) Eagan asked PP to sign as witness on many of the wills and in some cases, PP was named as co-executor on the wills;
- (d) a beneficiary of the estate of deceased client JK has raised concerns with Eagan about the sale of the principal residence of client JK where the purchaser never fully paid for the residence;
- (e) In the past, Eagan had made monetary payments to clients who complained about his handling of their accounts;
- (f) In response to a request from the Respondent's compliance department to disclose a complete list of clients who had implemented leveraging strategies, Eagan deliberately withheld disclosure of several leveraged clients;
- (g) Many of the clients for whom Eagan had implemented leveraging strategies were clients who were previously mortgage free and "not entirely comfortable with [their investment] loan[s]" and Eagan had misled many clients about the content of the investment portfolio that had been purchased with the proceeds from investment loans by telling the clients that they had purchased gold in their portfolio when in fact they had purchased "[mutual funds comprised of holdings in] mining shares";
- (h) In the past, Eagan had a practice of processing purchases subject to deferred sales charge fees ("DSC fees") and subsequently processed switches from client portfolios (often without client instructions) to convert 10% free units to front end load in order to increase his trailer fee income; and

- (i) Eagan had arranged for the transfer of 6 client accounts from Desjardins to the Respondent even though Eagan had not had any contact with at least 5 of those clients for many years (the “Dormant Accounts”).

16. The November 28, 2011 Letter included a list of the names of: (1) 15 mutual fund clients and individuals for whom PP stated Eagan had prepared wills; (2) approximately 25 clients with leveraged investment accounts who PP believed had not been disclosed to the Respondent; and (3) Dormant Accounts that PP stated had been transferred by Eagan from Desjardins to the Respondent.<sup>1</sup>

17. The Respondent failed to report the allegations against Eagan that were set out in the November 28, 2011 Letter on the Member Event Tracking System (“METS”) as required by MFDA Policy No. 6.

18. From December 20-23, 2011, in response to PP’s letter, the Respondent’s compliance department conducted an onsite branch audit of Eagan’s branch in response to the issues raised in the November 28, 2011 Letter. During the audit, the Respondent identified, among other things:

- (i) accounts had been opened for clients without completed New Client Account Forms (“NCAF”) forms including the accounts of clients BA and AJ whose accounts had been listed as “Dormant accounts” in the November 28, 2011 Letter (the Respondent states that it placed accounts with missing NCAFs on trade watch/restriction pending the receipt of completed account documentation);
- (ii) transactions had been processed in the accounts of three clients that were serviced by Eagan without evidence of client authorization;
- (iii) concerns were identified in accounts serviced by Eagan with respect to:
  - a. the accuracy of know-your-client (“KYC”) records on file for clients;
  - b. the suitability of the investments held in many client portfolios; and
  - c. the suitability of the leveraged investment strategies that had been implemented for many clients;

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<sup>1</sup> In fact, unbeknownst to PP, the Respondent was aware of these 25 leveraged accounts.

- (iv) Eagan was unable to produce some documentation required to be associated with the leveraged accounts of clients whose accounts he serviced; and
- (v) multiple pre-signed forms including pre-signed NCAFs, KYC information forms and “Change of Dealer” forms were found in the files of clients whose accounts were serviced by Eagan.

19. In January 2012, the Respondent learned that prior to the termination of Eagan’s registration with Desjardins, Desjardins had reprimanded Eagan for being an executor for a client. The Respondent states that Eagan advised it that this issue pertained to one client and that Desjardins had issued him a warning letter which had subsequently been removed.

20. On February 21, 2012, the Respondent’s compliance department issued its audit report. The audit report confirmed some of the conduct alleged by PP in his November 28, 2011 Letter. The audit report did not specifically address any findings with respect to Eagan’s activities pertaining to the preparation of wills and powers of attorney, that Eagan had named himself as Executor or Manager of Trusts in the wills that he had prepared, or that Eagan had transferred Dormant Accounts to the Respondent.

21. The Respondent requested that Eagan provide a response to its audit report by no later than May 21, 2012. Eagan failed to respond to this request claiming it was due to medical reasons.

22. Following the receipt of the November 28, 2011 Letter, the Respondent failed to conduct a reasonable supervisory investigation into Eagan’s conduct. Among other things, the Respondent:

- (a) had a general requirement that Approved Persons disclose all outside business activities, but the Respondent failed to inform Eagan that he was not permitted to engage in will preparation activities or to accept appointments as estate trustee for estates of clients after it received the November 28, 2011 Letter;

- (b) did not contact the clients or other individuals identified in the November 28, 2011 Letter, that Eagan allegedly prepared wills for, until September 6, 2012;
- (c) accepted Eagan's denials with respect to the conduct described in the November 28, 2011 Letter;
- (d) failed to determine how the 6 Dormant Accounts listed in the November 28, 2011 Letter had been transferred from Desjardins to the Respondent or adequately investigate whether there was any evidence that any of the clients had authorized the account transfers;
- (e) failed to locate the Dormant Accounts of client LDG and client OM (who had been listed as owners of Dormant Accounts in PP's November 28, 2011 letter); and
- (f) failed to take adequate steps to determine whether Eagan had settled complaints directly with clients.

### **Unauthorized Redemption**

23. On August 10, 2012, the Respondent's compliance staff directed an inquiry to Eagan and PP after observing a large redemption in the amount of \$120,000 in the account of corporate client TR, an account serviced by Eagan. In particular, the Respondent requested a copy of the paperwork associated with the \$120,000 redemption transaction.

24. In response to the query, Eagan claimed that the redemption had been processed as a result of the client's submission of paperwork directly to the fund company. Eagan denied any knowledge or involvement with the transaction.

25. The Respondent made further inquiries to the fund company which revealed that:

- (i) an "off book" redemption<sup>2</sup> had been submitted to the fund company by fax from Eagan's branch office;

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<sup>2</sup>A redemption that was processed off the books and records of the Respondent by having paperwork sent directly to the fund company rather than processing the transaction through the Member's back office system.

- (ii) the account of TR was controlled by Eagan's brother EE;
- (iii) the account records associated with the TR account included holdings linked to 4 client accounts that had been co-mingled on the back office system of the Respondent;
- (iv) the fund company had records of 4 separate client accounts and independent holdings for each of those accounts associated with the single client account number that was recorded on the Respondent's back office system. The 4 distinct client accounts on record with the fund company included the corporate account holdings of TR and the investment holdings and separate accounts of clients WL, LDG and OM. LDG and OM were two of the 5 "Dormant Account" holders that had been listed in PP's November 28, 2011 letter;
- (v) the queried transaction had resulted in the redemption of 100% of the holdings of "Dormant Account" holder LDG without any evidence of the knowledge, authorization or approval of client LDG; and
- (vi) the paperwork that had been submitted to the fund company in connection with the queried redemption directed the fund company to make the proceeds of the transaction payable to LDG c/o a TD Waterhouse account that was later found to be owned by Eagan.

### **The Respondent Terminated Eagan**

26. On August 16, 2012, the Respondent terminated Eagan's agency agreement with the Respondent for cause and Eagan ceased to be an Approved Person of the Respondent. In its termination letter to Eagan, the Respondent stated, among other things, that:

[The Respondent] has determined, subsequent to an investigation of [Eagan's] conduct, that [Eagan had] changed client addresses without their written authorization . . . that the 'new' address for these clients is that of [Eagan's] brother . . . Furthermore, we have reason to believe that [Eagan has] committed securities fraud with respect to the account of [Client LDG] and as such we have referred this matter to Ottawa Police Services for their investigation.

27. The Respondent advised the Ottawa Police Services of Eagan's alleged fraud on August 16, 2012.

28. The termination of Eagan led to the commencement of Staff's disciplinary hearing against Eagan.

29. LDG subsequently commenced a lawsuit and recovered monies from TD Waterhouse which had been fraudulently transferred to it by Eagan.

### **Steps Taken Following Eagan's Termination**

30. On September 6, 2012, following the termination of Eagan, the Respondent sent a letter to clients whose accounts with the Respondent had been serviced by Eagan. The letter asked clients to inform the Respondent if:

- (i) Eagan had been designated as executor or co-executor in their wills and if so, to notify the Respondent as to when that designation had been made;
- (ii) they were aware of Eagan acting as an executor of any client account;
- (iii) Eagan had been appointed to act as their Power of Attorney or had been granted a Limited Trading Authorization for their accounts and if so, to inform the Respondent as to when those appointments occurred and whether the appointments were still in force;
- (iv) they had "ever settled a complaint directly with Eagan as opposed to a registered dealer or Regulator" while their accounts were held with the Respondent;
- (v) they had ever made a cheque payable to Eagan personally or to a numbered company that he owned or any other entity for the purpose of investing in mutual funds; and
- (vi) Eagan had contacted them for the purpose of investing since August 16, 2012.

31. The Respondent acknowledges that, as part of its obligation to conduct a reasonable supervisory investigation, it should not have delayed from November 28, 2011 to September 6, 2012 to send a letter to clients serviced by Eagan.

32. The Respondent received a response from client AD informing the Respondent that she had named Eagan as the executor in her will. In November 2012, the Respondent contacted client AD by telephone and by letter to recommend that she replace Eagan with a different individual to serve as executor of her estate. The Respondent did not request a copy of the will of client AD.

### **Client YC**

33. As noted in paragraph 15(a) above, in the November 28, 2011 Letter, PP had identified client YC by name as the most recent client for whom Eagan had prepared a will “this past month”.

34. After receiving the November 28, 2011 Letter from PP, the Respondent did not contact client YC until September 6, 2012 to: (1) determine whether it was true that, as PP had reported, Eagan had prepared client YC’s will and whether or not he had arranged to have himself designated as executor; or (2) address the resulting conflict of interest by the exercise of responsible business judgment influenced only by the best interests of the client.

35. During the September 6, 2012 phone call, YC specifically denied that Eagan was her executor.

36. In a March 2013 telephone call, YC admitted to the Respondent that Eagan had been the executor of her will but had since been removed.

37. In addition, the Respondent’s letter to client YC dated September 6, 2012 did not specifically advise her that it had received information that Eagan had prepared her will and may

have designated himself as her executor, and the Respondent did not specifically contact client YC with respect to this information.

38. As it turned out, PP had accurately reported that Eagan had prepared client YC's will in October 2011 after her account was transferred to the Respondent. Further, Eagan had designated himself as executor of client YC's estate.

39. Following Eagan's termination, client YC apparently followed Eagan's advice to transfer her account to an Investment Industry Regulatory Organization of Canada ("IIROC") regulated investment dealer that Eagan had recommended. The IIROC advisor to whom client YC's account was transferred had previously worked with Eagan and PP at Desjardins.

40. On September 13, 2013, client YC died.

41. In November 2013 (more than one year after the Respondent terminated Eagan), Eagan exercised his authority as estate trustee of client YC's estate to redeem all investments that were held in client YC's investment account at the IIROC regulated dealer and deposited the redemption proceeds in a bank account that he controlled. The money was subsequently misappropriated. None of the money was dispersed to the beneficiaries.

### **Criminal Charges Against Eagan**

42. In April 2015, Eagan was charged by Ottawa Police Services with respect to activities which occurred while he was a mutual fund salesperson. The charges concerned conduct of Eagan that included his misappropriation of the investment assets in the account of client LDG and in the accounts of deceased client YC.

### **Mitigating Factors**

43. As a result of the Respondent's interactions with Eagan, it revised its Head Office Supervisory Program ("HOSP") by enhancing the program to include more open-ended and in-

depth questions and bigger samples during branch audits. Specifically it added the following key supervisory activities to the HOSP Framework: “Director, Compliance updates the Committee regarding any major issues identified during the audits and provides an update on the status of the audits schedule to ensure WFM adheres to the schedule”; and “In instances where an RCO observes anything egregious they must simultaneously advise both the CCO and the Director of Compliance”. This in turn, is communicated to the Compliance Committee.

44. The Respondent also now requires branch auditors to take into account the proportion of LTA usage, leverage usage and concentration in an approved persons’ book when conducting a branch audit.

45. The Respondent has, at all times, co-operated with MFDA Staff’s investigation of this matter.

## **Discussion**

46. In coming to its decision, the Panel at all times considered the facts set out in the Settlement Agreement, the Submissions of Staff and the Submissions of Respondent’s Counsel, the case law to which it was referred during submissions and the penalty guidelines.

47. It is trite to say that the Rules, regulations and policies of the MFDA are designed to preserve the integrity of its Members and to protect the public with whom they deal. It is, therefore, of the utmost importance that they are followed and that deficiencies identified as a result of MFDA audits or Member investigations not only are corrected, but that this be done in a timely fashion.

48. The Panel was mindful that when determining whether it would be appropriate to accept a proposed settlement, MFDA hearing panels typically take into consideration whether the settlement:

- (a) would be in the public interest and whether the penalty imposed will protect investors;

- (b) is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- (c) addresses the issues of both specific and general deterrence;
- (d) will prevent the type of conduct described in the Settlement Agreement from occurring again in the future; and
- (e) will foster confidence in the integrity of the Canadian capital markets and the MFDA, and in the regulatory process itself.

*Sterling Mutuals Inc. (Re)*, 2016 LNCMFDA 77 at para13 (page 10) Reasons for Decision dated June 27, 2016 [*“Sterling Mutuals”*]

49. In previous cases, Hearing Panels have also taken into account the following additional factors when evaluating whether the penalties proposed in a Settlement Agreement should be accepted:

- (a) The seriousness of the contraventions admitted to by the Respondent or 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.

*Cunningham (Re)*, 2010 LNCMFDA 54 supra at p. 14, para. 22.

50. The Panel considered that the contraventions that the Respondent has admitted to are serious and fundamental to the regulatory framework. The Respondent received a credible report from an Approved Person (PP) that another Approved Person (Eagan) was engaged in activities that could result in potentially serious client harm. Although the Respondent conducted a compliance audit at Eagan's branch within a month after receiving PP's letter, the Respondent failed to:

- (a) fully investigate the allegations contained in the letter and failed to investigate some of the allegations at all;
- (b) warn its clients about the potential implications of the misconduct that had been reported to the Respondent; or
- (c) report to the MFDA that the letter and allegations against its Approved Person had been received.

51. Even when the results of the compliance audit appeared to corroborate the concerns that were raised to the Respondent by PP, the Respondent failed to conduct a reasonable supervisory investigation into many of the allegations of misconduct that were reported in PP's letter but were not investigated during the audit.

52. In January 2012, the Respondent received further information that was consistent with the allegations in the letter from PP. The Respondent again failed to conduct a reasonable supervisory investigation into the reports that Eagan was allegedly preparing wills for clients without authorization or approval from the Member (and contrary to its policies and procedures) and was designating himself as executor and accepting appointments as executor for the estates

of deceased clients. The Respondent also failed to investigate the allegation that dormant client accounts had been transferred from Desjardins to the Respondent without client authorization even when its review revealed that some of the dormant accounts that had been reported by PP had deficient account opening documentation.

53. The Respondent's failure to conduct a reasonable supervisory investigation in the circumstances or to report these allegations of misconduct to the MFDA are unacceptable and justify the significant disciplinary action that has been taken in this case.

54. The Panel also considered that the Respondent has been a Member of the MFDA since May 10, 2002. This is the second time that the Respondent has been a respondent to an MFDA disciplinary proceeding. The previous disciplinary proceeding concerned the failure of the Respondent to properly implement an agreement and undertaking to address compliance deficiencies that had previously been identified by Staff including the Respondent's failure to adequately review and approve the opening of new accounts, the documentation of Know-Your-Client ("KYC") information obtained from clients and to create and use reports that would assist the Respondent to identify unusual trading patterns in client accounts. The Respondent had also failed to maintain adequate records of trade supervision. The Respondent was required to pay a \$50,000 fine, retain PriceWaterhouseCoopers LLP as an independent monitor to assist it to resolve the compliance deficiencies and to pay \$25,000 in costs as a consequence of the acceptance of the 2010 settlement agreement that dealt with the contraventions in that proceeding.

*Worldsource Financial Management Inc. (Re)*, 2010 LNCMFDA 40.

55. As set out above, the Panel felt that the admitted conduct was very serious. However, we believed that the Settlement Agreement fairly addressed the concerns arising from the facts. The Panel further believed that in the circumstances of the facts set out above, the Settlement Agreement and the agreed penalty were within a reasonable range.

## RESULT

56. For all of the above reasons, the Panel has concluded that the Settlement Agreement is reasonable. Accordingly, the following penalties are imposed upon the Respondent:

- (a) If at any time a non-party to this proceeding, with the exception of the bodies set out in s. 23 of MFDA, By-law No. 1, requests production of or access 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 required exhibits to the non-party without first redacting from them any and all personal information, pursuant in this pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Civil Procedure;
- (b) The Respondent shall pay a fine in the amount of \$150,000 on the date of this Order pursuant to s. 24.1(2)(b) of MFDA By-law No. 1; and
- (c) The Respondent shall pay costs in the amount of \$20,000 on the date of this Order pursuant to s. 24.2 of MFDA By-law No. 1.

Dated this 2<sup>nd</sup> day of August, 2017.

“Frederick W. Chenoweth”

Frederick W. Chenoweth  
Chair

“Joseph Yassi”

Joseph Yassi  
Industry Representative

“Robert C. White”

Robert C. White  
Industry Representative