



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Roger Eldred Gebhardt

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (“Hearing Panel”) of the Mutual Fund Dealers Association of Canada (“MFDA”) on November 29, 2021 at 10:00 a.m. (Eastern), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Roger Eldred Gebhardt (“Respondent”). Members of the public who would like to listen to the teleconference should contact hearings@mfd.ca to obtain particulars.

DATED this 7th day of October, 2021.

“Michelle Pong”

Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
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NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Commencing no later than September 17, 2018, the Respondent failed to disclose to the Member a conflict or potential conflict of interest that arose when the Respondent became aware that a client had named the Respondent's spouse as the sole estate trustee and sole beneficiary of the client's estate in the client's will, thereby failing to ensure that the conflict or potential conflict of interest was immediately disclosed to the Member and addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

Allegation #2: In October 2018, the Respondent processed, or facilitated the processing of, redemptions in the account of a deceased client directly with mutual fund companies, and failed to inform the Member of the redemptions or submit trade documents to the Member in respect of the redemptions, thereby:

- a) engaging in securities related business which was not carried on for the account of the Member or through its facilities, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 2.5.1 and 1.1.2; or
- b) concealing or attempting to conceal from the Member that the Respondent's spouse was the recipient of the proceeds of the redemptions as the client's sole estate trustee and sole beneficiary, contrary to MFDA Rule 2.1.1.

Allegation #3: Commencing no later than November 9, 2018, the Respondent failed to disclose to the Member a conflict or potential conflict of interest that arose when the Respondent became aware that the Respondent was named by a client as the recipient of a \$25,000 bequest in the client's will, thereby failing to ensure that the conflict or potential conflict of interest was immediately disclosed to the Member and addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

Allegation #4: On November 16, 2018, the Respondent misled the Member during the Member's investigation into his conduct when he falsely denied that he had ever been named as the estate trustee or beneficiary of an estate of a client, contrary to MFDA Rule 2.1.1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. Commencing in or about 1980, the Respondent was registered in the mutual fund industry.
2. From 2001 to January 2019, the Respondent was registered in Ontario as a dealing representative with IPC Investment Corporation (the “Member”), a Member of the MFDA.
3. Prior to being registered with the Member, the Respondent was registered with AFP Wealth Management Inc. (“AFP”). In 2001, AFP amalgamated with the Member.
4. On January 25, 2019 (shortly after the events described below became known), the Respondent resigned from the Member.
5. The Respondent is not currently registered in the securities industry in any capacity.
6. At all material times, the Respondent conducted business in the Hanover, Ontario area.

Allegation #1 – Failing to Disclose Conflict or Potential Conflict of Interest

Client #1

7. Commencing in the 1990s and continuing after AFP amalgamated with the Member, the Respondent was one of three mutual fund salespersons at AFP who was responsible for servicing client #1’s investment accounts. Subsequently, the Respondent became the sole Approved Person at the Member responsible for servicing client #1’s investment accounts.
8. In or about 2012, client #1 informed the Respondent that he intended to name him as his estate trustee¹. The Respondent informed client #1 that he would be unable to accept the nomination as estate trustee because he was aware that he was not permitted to act as estate trustee for a client.
9. On November 2, 2017, client #1 executed his will, in which he named the Respondent’s spouse, XX, as the sole estate trustee and sole beneficiary of his estate.

¹ In this Notice of Hearing, the term “estate trustee” is interchangeable with the term “executor” of a will.

10. At the time when client #1 executed his will in 2017, he was 77 years old and was a vulnerable client by virtue of his age.
11. On September 15, 2018, client #1 passed away.
12. On September 17, 2018, the Respondent was informed that client #1 had named XX as the sole estate trustee and the sole beneficiary of client #1's estate in his will.
13. The Respondent continued to service client #1's accounts at the Member after he became aware that client #1 had named XX as the sole estate trustee and sole beneficiary of his estate.
14. On September 28, 2018, the Ontario Superior Court of Justice issued a Certificate of Appointment of Estate Trustee with a Will to XX which authorized her to assume the role of estate trustee and deal with client #1's estate.

The Respondent Failed to Disclose to the Member that his Spouse was Named Estate Trustee and Beneficiary of Client #1's Estate

15. At all material times, the Member's policies and procedures required its Approved Persons to immediately disclose conflicts or potential conflicts of interest to the Member. The Member prohibited Approved Persons, on the basis that it was a conflict or potential conflict of interest, from accepting "gratuities" unless nominal in amount, and required all monetary benefits received by Approved Persons from clients to flow through the Member. The Member also prohibited Approved Persons from acting as the estate trustee for clients who were not a "Related Person" of the Approved Person as defined in the *Income Tax Act* (Canada).
16. As the sole beneficiary of client #1's estate, XX stood to inherit, among other things, client #1's investment accounts at the Member valued at approximately \$480,318, and client #1's house.
17. When the Respondent became aware that client #1 had named XX as the sole estate trustee and sole beneficiary of his estate, the circumstances gave rise to a conflict or potential conflict of interest that the Respondent was required to immediately disclose to the Member. The Respondent failed to immediately disclose to the Member, among other things, that client #1 had passed away, that his spouse had been named as the estate trustee and beneficiary of client #1's estate, and that he continued to service client #1's accounts at the Member.
18. By virtue of the foregoing, the Respondent failed to disclose to the Member a conflict or potential conflict of interest that arose when the Respondent became aware that a client had named

the Respondent's spouse as the sole estate trustee and sole beneficiary of the client's estate in the client's will, thereby failing to ensure that the conflict or potential conflict of interest was immediately disclosed to the Member and addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1, and 1.1.2.

Allegation #2 – Processing Redemptions Directly with Mutual Fund Companies

19. At the time of client #1's death, client #1 held in his accounts at the Member approximately \$480,318 in mutual funds offered by fund companies A, B, C and D.

20. At all material times, the Member had policies and procedures that stated the following with regard to trades processed by Approved Persons directly with mutual fund companies:

“If an order is placed over the phone or by other means that circumvent the branch office (for example, a fax sent directly by an Advisor to a Fund Company or Intermediary without a copy also being provided to the branch), copies of the applicable backup documents (KYC, Client Acknowledgement, and trade documents) must be received by the branch by the next business day. This ensures that [the] Branch Manager is able to perform the required compliance review of the trade in a timely manner.”

21. Between October 23 and 29, 2018, while he was the Approved Person responsible for servicing client #1's accounts at the Member, the Respondent processed, or facilitated the processing of, the redemption of client #1's accounts at the Member by submitting trading instructions directly to mutual fund companies.

22. In particular, the Respondent signed three letters of direction (“LODs”) to fund companies A, B and C, and two amended LODs to fund companies A and B, which directed them to redeem client #1's accounts and to send the redemption proceeds to XX.

23. The Respondent also telephoned fund company A to inform the company that it would receive an amended LOD.

24. The LODs and amended LODs were sent to the fund companies from the Respondent's office. The Respondent did not submit copies of the LODs or amended LODs to the Member.

25. After they received the LODs and amended LODs directing the fund companies to redeem the mutual fund holdings of client #1, the fund companies processed the redemptions and sent the redemption proceeds in the total amount of \$116,541.17 to XX.

26. In addition, on October 23 and 29, 2018, XX signed estate claim forms directing fund company D to redeem client #1's holdings in fund company D and to send the redemption proceeds to XX. The Respondent did not submit copies of the estate claim forms to the Member.²

27. After fund company D received the estate claim forms, it processed redemptions of the holdings of fund company D that were held in client #1's investment accounts and sent the redemption proceeds in the total amount of approximately \$363,777 to XX.

28. The Respondent did not submit copies of the LODs, amended LODs, or any other trade documents to the Member in respect of the redemptions described above. The Respondent also did not inform the Member that redemptions were being processed in the accounts of deceased client #1 and that LODs, amended LODs, and other trade documents had been submitted directly to fund companies A, B, C and D to facilitate the redemptions.

29. The Respondent thereby concealed or attempted to conceal from the Member that client #1 was deceased, and that the Respondent's spouse was the recipient of the proceeds of the redemptions as client #1's sole estate trustee and sole beneficiary.

30. On October 26, 2018, the Respondent's branch manager was conducting supervisory reviews of trades processed by Approved Persons at her branch and discovered some of the redemption transactions described above.

31. As a result of follow-up communications querying the circumstances, the Respondent informed the Member for the first time that: client #1 had passed away; client #1's will had named the Respondent's spouse XX as estate trustee and beneficiary of client #1's estate; and redemptions had been processed directly with mutual fund companies in order to liquidate client #1's estate.

32. By failing to submit trade documents to the Member in respect of the redemptions described above and failing to inform the Member of the redemptions, the Respondent deprived the Member of an opportunity to supervise the transactions and determine whether the transactions should be processed.

33. On January 25, 2019, the Respondent resigned from the Member.

² On November 6, 2018, the Respondent submitted a copy of the estate claim dated October 29, 2018 to the Member, but this was only after the Member began querying the circumstances of the redemptions as described below in paragraph 31.

34. By virtue of the foregoing, the Respondent processed, or facilitated the processing of, redemptions in the account of a deceased client directly with mutual fund companies, and failed to inform the Member of the redemptions or submit trade documents to the Member in respect of the redemptions, thereby:

- a) engaging in securities related business which was not carried on for the account of the Member or through its facilities, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 2.5.1 and 1.1.2; or
- b) concealing or attempting to conceal from the Member that the Respondent's spouse was the recipient of the proceeds of the redemptions as the client's sole estate trustee and sole beneficiary, contrary to MFDA Rule 2.1.1.

Allegation #3 – Failing to Disclose Conflict or Potential Conflict of Interest

Client #2

35. Commencing in the 1990s, the Respondent was the mutual fund salesperson at AFP responsible for servicing client #2's investment accounts. After AFP amalgamated with the Member in 2001, the Respondent became the Approved Person at the Member responsible for servicing client #2's investment accounts.

36. In early 2018, client #2 was approximately 93 years old and had been hospitalized, and was therefore a vulnerable client.

37. While client #2 was in the hospital, the Respondent and client #2's son, who was also a client of the Member, attended at the home of client #2 and located client #2's will and power of attorney documents.

38. The documents reflected that client #2 had named the Respondent as client #2's estate trustee, and as joint power of attorney with client #2's son.

39. The Respondent was aware that he could not accept the nomination as estate trustee or power of attorney for a client and therefore recommended that someone else be appointed as client #2's power of attorney and estate trustee.

40. On February 21, 2018, client #2 executed a new will in which he bequeathed \$25,000 to the Respondent (the “Bequest”).³

41. On June 18, 2018, client #2 passed away.

42. After client #2 passed away, on or about October 26, 2018, client #2’s son provided a cheque to the Respondent in the amount of \$25,000 in respect of the Bequest, which the Respondent subsequently deposited into his bank account on or before November 9, 2018.

The Respondent Failed to Disclose to the Member that he was a Beneficiary of Client #2’s Estate

43. When the Respondent became aware that he was a beneficiary of client #2’s estate, the circumstances gave rise to a conflict or potential conflict of interest that the Respondent was required to immediately disclose to the Member. The Respondent failed to immediately disclose to the Member that he had been named as a beneficiary in client #2’s will, and that he had received a cheque in the amount of \$25,000 from client #2’s son in respect of the Bequest.

44. Prior to December 5, 2018, as described below, the Respondent did not inform the Member that he had been named as a beneficiary in client #2’s will.

45. By virtue of the foregoing, the Respondent failed to disclose to the Member a conflict or potential conflict of interest that arose when the Respondent became aware that the Respondent was named by a client as the recipient of a \$25,000 bequest in the client’s will, thereby failing to ensure that the conflict or potential conflict of interest was immediately disclosed to the Member and addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member’s policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

Allegation #4 - Misleading the Member

46. After the Member discovered the redemptions from client #1’s accounts described above, the Member commenced an investigation.

47. On November 16, 2018, as part of its investigation, the Member interviewed the Respondent. During the interview, the Respondent told the Member that no clients other than client #1 had named him as their estate trustee or beneficiary. In particular, when the Member

³ Client #2’s son was appointed as the estate trustee in the new will.

asked the Respondent: “And have you ever been named as Executor or beneficiary on any of your other client accounts?” the Respondent replied: “None that I’m aware of.”

48. The Respondent’s statement to the Member was false, because at the time when he made the statement, the Respondent was aware that:

- a) he had been named, but declined to serve, as client #2’s estate trustee in client #2’s previous will, as described above in paragraphs 38-39; and
- b) he had been named as a beneficiary in client #2’s subsequent will and had received a cheque in the amount of \$25,000 in respect of the Bequest approximately three weeks prior to the interview, as described above in paragraphs 40 and 42.

49. On November 21, 2018, the Member requested a written statement from the Respondent concerning the matters described above. The Member advised the Respondent that his written statement had been requested by Staff of the MFDA for the purposes of its investigation.

50. On December 5, 2018, the Respondent provided his written statement to the Member, which informed the Member for the first time that he had been named as client #2’s estate trustee in client #2’s previous will, and had been named as a beneficiary in client #2’s subsequent will.

51. By virtue of the foregoing, the Respondent misled the Member during its investigation into his conduct when he provided a false or misleading response to the Member regarding whether any clients had named him as their estate trustee or beneficiary, contrary to MFDA Rule 2.1.1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;

- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- a) a reprimand;
- b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- d) revocation of the authority of such person to conduct securities related business;
- e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time; and
- f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Office of the Corporate Secretary within twenty days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Paul Blasiak
Email: pblasiak@mfd.ca

A **Reply** shall be **filed** by:

- a) providing four copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- b) transmitting one electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- a) to **serve** and **file** a **Reply**; or
- b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

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