



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: Roger Eldred Gebhardt

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing (the “Settlement Hearing”) to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Roger Eldred Gebhardt (the “Respondent”).

2. Staff and the Respondent, consent and agree to the terms of this Settlement Agreement.

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

II. CONTRAVENTIONS

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) Commencing on 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 2.1.4¹ and 2.1.1; and

- b) 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 and 2.1.1.

III. TERMS OF SETTLEMENT

5. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 8 years from the date that this Settlement Agreement is accepted by a 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 \$70,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which shall be payable in certified funds as follows:
 - i. \$27,500 on the date that this Settlement Agreement is accepted by a Hearing Panel;
 - ii. \$42,500 on or before December 15, 2022;
- c) the Respondent shall pay costs in the amount of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1, which shall be payable in certified funds as follows;

¹ On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this Settlement Agreement pre-dated the amendment to this Rule, all contraventions set out in this Settlement Agreement that make reference to that Rule concern the version of the Rule that was in effect between February 27, 2006 and June 30, 2021.

- i. \$3,750 on the date that this Settlement Agreement is accepted by a Hearing Panel;
- ii. \$3,750 on or before December 15, 2022;
- d) the Respondent shall in the future comply with MFDA Rules 2.1.4 and 2.1.1; and
- e) the Respondent will attend by videoconference on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule “A”.

IV. AGREED FACTS

Registration History

7. Commencing in or about 1980, the Respondent was registered in the mutual fund industry.

8. 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.

9. Prior to being registered with the Member, the Respondent was registered with AFP Wealth Management Inc. (“AFP”). In 2001, AFP amalgamated with the Member.

10. On January 25, 2019 (shortly after the events described below became known), the Respondent resigned from the Member.

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

12. At all material times, the Respondent conducted business in the Hanover, Ontario area.

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

13. Commencing in the mid-2000s, the Respondent was one of three mutual fund salespersons who was responsible for servicing client #1’s investment accounts. In 2010, the Respondent became the sole Approved Person at the Member responsible for servicing client #1’s investment accounts.

14. In or about 2012, client #1 informed the Respondent that he intended to name him as his estate trustee². 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.
15. 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.
16. There is no evidence that the Respondent or XX were involved in the preparation of client #1's will, involved in client #1's decision to name XX as his estate trustee and sole beneficiary, or aware that XX was named estate trustee or sole beneficiary of client #1's estate prior to client #1's death.
17. At the time when client #1 executed his will in 2017, he was 77 years old.
18. The lawyer who prepared client #1's will advises that he met with client #1 at various times and he was of sound mind when executing the will.
19. On September 15, 2018, client #1 passed away.
20. On September 17, 2018, the Respondent was informed, he states for the first time, that client #1 had named XX as the sole estate trustee and the sole beneficiary of client #1's estate in his will.
21. 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.
22. 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.
23. At all material times, client #1 had no living relatives other than his sister and her family from whom he was estranged. Client #1's family has not made any complaints to the Member or to the MFDA or contested client #1's will.

² In this Settlement Agreement, the term "estate trustee" is interchangeable with the term "executor" of a will.

24. The Respondent states that he and XX had been longtime and close friends of client #1 and this relationship began when client #1 became a client of another financial advisor who worked at the Respondent's office.

25. 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).

26. As the sole beneficiary of client #1's estate, XX stood to inherit client #1's investment accounts at the Member valued at approximately \$480,318, and client #1's house which was later sold to client #1's estranged sister for \$164,000.

27. 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 disclose to the Member 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.

28. 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 four (4) fund companies.

29. Between October 23 and 25, 2018, the Respondent assisted XX to prepare and submit letters of direction ("LODs") to three of the fund companies, which directed those fund companies to redeem client #1's accounts and to send the redemption proceeds to XX in her capacity as estate trustee. The Respondent signature guaranteed LODs that had been signed by XX as the "client" before those LODs were submitted to each of those fund companies. The Respondent also telephoned one of the fund companies to inform it that it would receive a LOD.

30. In addition, on October 23 and 29, 2018, XX signed estate claim forms directing the fourth fund company to redeem client #1's holdings and to send the redemption proceeds to XX in her

capacity as estate trustee. The Respondent did not submit copies of the estate claim forms to the Member. The Respondent states that he was not involved in submitting the estate claim forms that were signed by XX to the fund company.

31. After they received the LODs and estate claim forms, the fund companies processed the redemptions and sent the proceeds to XX in her capacity as estate trustee.

32. The Respondent did not inform the Member that the holdings in the accounts of client #1 were being redeemed by his spouse in her capacity as estate trustee and sole beneficiary of his estate. He also did not submit copies of the LODs, estate claim forms³ or any other trade documents to the Member in respect of the redemptions described above. Consequently, the Member was not aware that client #1 had died or that the redemptions described above were being directed to XX until October 26, 2018 when the Respondent's branch manager, while conducting supervisory reviews of trades processed by Approved Persons at her branch, discovered some of the redemption transactions.

33. 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.

34. After discovering that redemptions were being processed in client #1's investment accounts as described above, the Member commenced an investigation.

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

36. A portion of the redemption proceeds was held-up pending the Member's investigation. However, in February 2019, the Member concluded that it had no basis to withhold these monies from XX and the funds were released to her.

37. 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 whose accounts were serviced by the Respondent had named the Respondent's spouse as the sole estate

³ 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 in paragraph 33.

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 and 2.1.1.

Client #2 – Failing to Disclose Conflict or Potential Conflict of Interest

38. 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.

39. In early 2018, client #2 was approximately 93 years old and had been hospitalized.

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

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

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

43. Client #2 then revised his power of attorney to appoint his son to that role alone.

44. On February 21, 2018, client #2 also executed a new will which named his son as his sole estate trustee and bequeathed \$25,000 to the Respondent (the "Bequest").

45. There is no evidence that the Respondent was involved in the preparation of client #2's will dated February 21, 2018, involved in client #2's decision to leave the Bequest to the Respondent, or aware of the Bequest prior to the death of client #2.

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

47. 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.

48. Client #2's son did not complain with respect to the Bequest or object to it.

49. When the Respondent became aware that he was a beneficiary of the estate of client #2, a client whose accounts the Respondent serviced on behalf of the Member, 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.

50. 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.

51. By virtue of the foregoing, the Respondent failed to immediately disclose to the Member that a conflict or potential conflict of interest arose when the Respondent became aware that he had been named as the recipient of a \$25,000 bequest in the will of a client whose accounts he serviced on behalf of the Member, 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 and 2.1.1.

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

53. 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 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."

54. 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; 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 with the Member.

55. 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.

56. 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.

Additional Factors

57. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

58. No complaints have been received by the Member or by the MFDA in respect of the Respondent's conduct.

59. As part of its investigation into the matters described herein, the Member contacted clients formerly serviced by the Respondent to determine, among other things, whether any had named the Respondent or any of his family members as beneficiary, executor, or trustee. The Member has not received any responses reporting additional instances in which other clients did so.

60. By entering into the Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a contested hearing of the allegations.

V. ADDITIONAL TERMS OF SETTLEMENT

61. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

62. The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public

pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

63. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

64. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted at the settlement hearing, subject to rule 15.3 of the MFDA Rules of Procedure;
- b) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- c) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA By-law No. 1; and

- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

65. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in this Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

66. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of MFDA By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

67. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law. The terms of the Settlement Agreement, including the attached Schedule "A", will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

68. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 5th day of August, 2022.

“Roger Eldred Gebhardt”

Roger Eldred Gebhardt

“CG”

Witness – Signature

CG

Witness – Print name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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: Roger Eldred Gebhardt

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") provided notice to the public of a Settlement Hearing in respect of Roger Eldred Gebhardt (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of MFDA By-law No. 1;

AND WHEREAS based upon the admissions of the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that:

- a) Commencing on 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 and 2.1.1; and

- b) 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 and 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 8 years from the date that this Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No.1;

2. The Respondent shall pay a fine in the amount of \$70,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which shall be payable in certified funds as follows:

- i. \$27,500 on the date that this Settlement Agreement is accepted by a Hearing Panel;
- ii. \$42,500 on or before December 15, 2022;

3. The Respondent shall pay costs in the amount of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1, which shall be payable in certified funds as follows:

- i. \$3,750 on the date that this Settlement Agreement is accepted by a Hearing Panel;
- ii. \$3,750 on or before December 15, 2022;

4. 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 [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 898562