



**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: Byron H. Daues**

Heard: August 21, 2014, in Toronto, Ontario  
Reasons for Decision: September 4, 2014

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney	)	Chair
Robert Christianson	)	Industry Representative
Colleen Waring	)	Industry Representative

Appearances:

Charles Toth	)	Senior Enforcement Counsel, Mutual Fund
	)	Dealers Association of Canada
	)	
Robert Brush	)	Counsel for Byron H. Daues
	)	
	)	

## **BACKGROUND**

1. We were constituted as a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement dated August 19, 2014 (the “Settlement Agreement”) between the MFDA and Byron H. Daves (the “Respondent”).

2. At the commencement of the hearing, we ordered that the proceedings be moved *in camera*. We then considered the Settlement Agreement and heard from Counsel as to why we should accept the Settlement Agreement and, if so, what the appropriate penalty might be.

3. The Hearing Panel then moved into public session and the Chair announced that the Hearing Panel would accept the Settlement Agreement<sup>1</sup> and the penalties therein imposed. We signed the Order dated August 21, 2014. The Chair indicated that brief reasons for our decision would follow.

4. These are those Reasons.

## **ADMISSIONS**

5. The Respondent admits the following contraventions of the By-laws, Rules and Policies of the MFDA:

a) commencing in July 2011, he engaged in personal financial dealings with a client when he borrowed \$40,000 from client AS, which he failed to repay, thereby giving rise to a conflict or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1.

b) he failed to report the following events, each of which constituted a complaint in

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<sup>1</sup> Exhibit 3

respect of personal financial dealings with a client, to the Member within two (2) business days or at all:

- i. client AS's verbal complaint to the Respondent in each of September, October, November and December 2011 in respect of the Respondent's failure to make payments on account of the monies he borrowed from client AS;
- ii. client AS's written complaint to the Respondent, dated January 18, 2012, in respect of the Respondent's failure to make payments on account of the monies he borrowed from client AS; and
- iii. client AS's civil action commenced against the Respondent in March 2012 claiming damages of \$40,000 plus costs and interest, in respect of the monies he borrowed from client AS;

contrary to MFDA Policy No. 6. Subsection 4.1(b)(v).

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

- a) the Respondent will make a lump sum payment to client AS of all the monies owed to her pursuant to the judgment she obtained against the Respondent;<sup>2</sup>
- b) the Respondent shall, for a period of two (2) months, be suspended from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- c) the Respondent shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, payable in 10 installments of \$1,000 due on or before the final business day of each month commencing November 28, 2014;

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<sup>2</sup> Client AS has confirmed receipt of all the monies owed to her by the Respondent.

- d) the Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1 payable in 10 installments of \$500 due on or before the final business day of each month commencing November 28, 2014;
- e) if the Respondent fails to comply with subparagraphs (c) or (d), then without further notice to the Respondent, the Respondent shall summarily be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1(c) of MFDA By-law No. 1 until all amounts due in accordance with subparagraphs (c) and (d) have been paid in full; and
- f) the Respondent shall in the future comply with MFDA Rules 2.1.4 and 2.1.1.

## **ANALYSIS AND REASONS**

7. The Hearing Panel may either accept or reject the Settlement Agreement.<sup>3</sup> The Hearing Panel will accept a settlement agreement if it is within a reasonable range of appropriateness. The Hearing Panel is likely to accept a settlement agreement where it has been negotiated between Counsel for the MFDA and experienced Counsel for the Respondent as is the case here.

8. The overwhelming concern of the Hearing Panel is to protect the public investor.<sup>4</sup>

9. The key factors which influenced us to approve the Settlement Agreement include the following:

- a) the Respondent's behaviour in this case was an isolated event;
- b) the Respondent has repaid client AS in full;
- c) the Respondent has no prior disciplinary record; and;
- d) the Respondent cooperated with the MFDA in its investigation and showed remorse

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<sup>3</sup> MFDA By-law No. 1, s. 24.4.3

<sup>4</sup> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.) at paras.59 and 68.

for his actions.

10. The Hearing Panel finds that the Settlement Agreement and the penalties fall within a reasonable range of appropriateness and will act as a specific and general deterrence and will protect investors.

**DATED** this 4<sup>th</sup> day of September, 2014.

“Terrance A. Sweeney”

Terrance A. Sweeney  
Chair

“Robert Christianson”

Robert Christianson  
Industry Representative

“Colleen Waring”

Colleen Waring  
Industry Representative

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