



**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: Douglas D. Malech**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Hearing dated March 24, 2009, the Mutual Fund Dealers Association of Canada (the “MFDA”) announced that it proposed to hold a hearing concerning a disciplinary proceeding commenced against Douglas D. Malech (the “Respondent”). Staff of the MFDA (“Staff”) and the Respondent propose to make a request to the hearing panel of the MFDA Prairie Regional Council (the “Hearing Panel”) to consider whether, pursuant to section 24.4 of By-law No. 1, the Hearing Panel should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff and the Respondent.

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No.1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

### **III. ACKNOWLEDGEMENT**

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to paragraph 29) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is approved by the MFDA.

### **IV. AGREED FACTS**

#### **Registration History**

6. Between October 1997 and November 2001, the Respondent was registered in Alberta as a mutual fund salesperson with various mutual fund dealers. He joined Worldsource Financial Management Inc. (the “Member”) on November 14, 2001.

7. The Respondent resigned from the Member effective July 10, 2008 as a result of the events described below. The Respondent is not currently registered in the securities industry in any capacity.

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

### **The Respondent Misappropriates \$10,000 from a Client**

9. B.M. passed away in 2007 and his wife, A.M., became the owner of his Registered Retirement Savings Plan and Locked In Retirement Account which were held through the Member.

10. In or about November 2007, AIG Life Insurance Company of Canada paid A.M. \$15,000 as the beneficiary of a life insurance policy on B.M.

11. A.M. subsequently contacted the Respondent to discuss the possibility of investing the insurance proceeds.

12. On or about November 28, 2007, the Respondent met with A.M. at her home to discuss options for investing the insurance proceeds. During this meeting, A.M. informed the Respondent that she would keep \$5,000 for herself and invest the remaining \$10,000 through him.

13. On or about November 29, 2007, A.M. withdrew \$10,000 from her bank account in the form of a money order payable to herself. A.M. endorsed the money order over to the Respondent and gave it to the Respondent so that he could invest the \$10,000 on her behalf.

14. At the time A.M. provided the endorsed money order to the Respondent, it was agreed that the Respondent would invest the funds in an AIM Trimark Guaranteed Investment Certificate (the "GIC") bearing an annual interest rate of 6.25 percent and maturing on June 18, 2008. This investment product did not exist. The Respondent states that he was unaware that the GIC did not exist at the time he agreed to invest A.M.'s funds.

15. On or about November 30, 2007, the Respondent cashed the money order and deposited the \$10,000 directly into his personal account at the Lakeland Credit Union.

16. On or about January 13, 2008, the Respondent met with A.M. and arranged for her to sign an AIM Trimark Investment Application form allegedly for the purchase of the GIC.

17. Following her meeting with the Respondent, A.M. made a number of attempts to contact him about the GIC. The Respondent did not respond.

18. In the absence of a reply from the Respondent, A.M. contacted AIM Trimark on or about June 11, 2008 to inquire about the GIC. AIM Trimark advised A.M. that AIM Trimark had ceased selling GICs many years earlier and there was no record of a GIC or any other investment held in her name.

19. On June 13, 2008, the Member became aware of the Respondent's conduct relating to A.M. and suspended the Respondent. During an interview with the Member, the Respondent admitted that he used the funds belonging to A.M. for purposes unrelated to her and did not purchase a GIC or otherwise invest the funds on her behalf.

20. Upon being advised that he had been suspended by the Member, the Respondent arranged for payment to be made to A.M. in the amount of \$10,000. In addition, the Respondent offered to pay A.M. interest in the amount of \$625. A.M. declined this offer.

21. The Respondent tendered his resignation with the Member on June 24, 2008. It was accepted by the Member on July 10, 2008 following the completion of its internal investigation.

## **V. CONTRAVENTIONS**

22. By engaging in the conduct described above, the Respondent admits the he failed to deal fairly, honestly and in good faith with client A.M., contrary to MFDA Rule 2.1.1.

## **VI. TERMS OF SETTLEMENT**

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

- (a) the Respondent shall pay a fine in the amount of \$2,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- (b) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

## **VII. STAFF COMMITMENT**

24. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of any conduct or alleged conduct of the Respondent in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraph 29 below.

## **VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

25. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie Regional Council of the MFDA on September 18, 2009.

26. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his rights to a full hearing, a review hearing 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.

27. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

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

29. 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 the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement.

30. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made 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 By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

31. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

**IX. DISCLOSURE OF AGREEMENT**

32. 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.

33. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

**X. EXECUTION OF SETTLEMENT AGREEMENT**

34. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

35. A facsimile copy of any signature shall be effective as an original signature.

DATED: September 15, 2009.

“Stanley Chrobot”

Witness – Signature

“Douglas Malech”

Douglas D. Malech

Stanley Chrobot

Witness – Print Name

“Shaun Devlin”

Staff of the MFDA  
Per: Shaun Devlin  
Vice-President, Enforcement



**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**

**S**

**Re: Douglas D. Malech**

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**ORDER**

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**WHEREAS** on March 24, 2009, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of a disciplinary proceeding commenced against Douglas D. Malech (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA (the "Settlement Agreement") in which the Respondent agreed to a proposed settlement of matters for which he could be disciplined pursuant to sections 20 and 24.1.1 of By-law No. 1;

**AND WHEREAS** the parties consent to an order abridging the period for notice of a settlement hearing in Rule 15.2(1);

**AND UPON** reviewing the Settlement Agreement and the Notice of Settlement Hearing, and upon hearing submissions from the Respondent and Staff of the MFDA;



**AND WHEREAS** the Hearing Panel of the Prairie Regional Council (the “Hearing Panel”) is of the opinion that the Respondent failed to deal fairly, honestly and in good faith with a client, contrary to MFDA Rule 2.1.1;

**IT IS HEREBY ORDERED THAT:**

- (i) the period for notice of a settlement hearing in Rule 15.2(1) is hereby abridged pursuant to Rules 1.3(1), 1.5(1)(b) and 2.2(1) of the MFDA Rules of Procedure;
- (ii) the Respondent shall pay a fine in the amount of \$2,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- (iii) Respondent shall summarily be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and
- (iv) if at any time a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, 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 intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

**DATED** this                    day of September, 2009.

Per: \_\_\_\_\_  
The Hon. Roger Kerans, Chair

Per: \_\_\_\_\_  
Rick Strong, Industry Representative

Per: \_\_\_\_\_  
Kathleen Jost, Industry Representative

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