



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: Kenneth Brian Karasick

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By way of a news release, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Pacific 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, Kenneth Karasick.

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 Part X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. From August 27, 1993 to March 14, 2013 the Respondent was registered as a mutual fund salesperson with Investors Group Financial Services Inc. (the “Member”).

7. The Respondent is now 72 years old, retired, and has not been registered in the securities industry since March 14, 2013.

Background

8. In 1999, the Respondent met client FM when the Member assigned client FM’s accounts to the Respondent as the mutual fund salesperson responsible for servicing the accounts.

9. From 1999 to 2012, the Respondent and client FM, who had been estranged from his family for many years, developed a close friendship. In January 2012, client FM passed away.

10. On July 13, 2012, Staff received a letter from SM, client FM's daughter and the administrator of her father's estate, alleging that the Respondent:

- (a) held a power of attorney for client FM;
- (b) had taken advantage of her father in setting up his in-trust account, naming himself as beneficiary of the account when client FM was allegedly not of sound mind at the time; and
- (c) had received a cash gift from client FM in 2009 upon the sale of his condominium.

11. The Respondent states that he did not take advantage of client FM whose interests were at all times protected by client FM's independent legal advisor. The in-trust account was established, by way of written instructions from, and managed by client FM's lawyer.

Conflict of Interest: Power of Attorney

12. In March 2009, client FM was seeking to sell his condominium and move to a retirement home. Client FM asked the Respondent if he would serve as his power of attorney to assist in the process.

13. On or about March 16, 2009, the Respondent and client FM attended at a notary public, retained and instructed by client FM, at which time client FM granted the Respondent power of attorney. The authority granted to the Respondent under the power of attorney was limited to the sale of client FM's condominium, dealing with various government agencies and health care providers on behalf of client FM, arranging interim accommodations for client FM, and finding a suitable retirement home for client FM.

14. The Respondent held the power of attorney from approximately March 16, 2009 to July 16, 2009, at which time client FM's lawyer, HE, assumed the power of attorney. The Respondent used the power of attorney for only the purpose for which it was granted and never exercised the power of attorney in relation to any of client FM's accounts at the Member.

15. At all material times, the Member's policies and procedures, consistent with MFDA requirements, prohibited its Approved Persons from holding a power of attorney for a client, unless the client was an immediate family member. Section 10.2 of the Member's Policies and Procedures Manual ("PPM"), dated May 27, 2009, outlined "Examples of Conflict of Interest Situations" that could give rise to a conflict of interest. Specific to a power of attorney, the PPM stated:

A client may wish to give you power of attorney over his or her affairs. You are not to act as attorney for clients except for members of your immediate family (i.e.: spouse, children or parents of the Consultant) as stipulated in MFDA Rule 2.3.1. In cases where you are appointed without your knowledge, you must decline to act in that capacity as soon as you become aware.

16. The Respondent did not disclose to the Member that he had accepted and held a power of attorney for client FM prior to, during, or after being granted the power of attorney.

Conflict of Interest: In-Trust Account/Named Beneficiary

17. On May 22, 2009, client FM executed a Settlement Indenture between himself, as settlor, and HE, as initial trustee, in order to establish an in-trust account at the Member.

18. The Settlement Indenture, prepared by client FM's lawyer HE, named the Respondent as a beneficiary of the trust. Client FM's brother and another individual were named as beneficiaries in the event that the Respondent predeceased client FM. The Respondent learned shortly after the execution of the Settlement Indenture that he had been named as the primary beneficiary.

19. On May 25, 2009, HE sent a letter to the Member advising that client FM had established a trust and instructed the Member to transfer client FM's investments in his non-registered accounts at the Member into an in-trust account, to be managed by HE in his capacity as the trustee. A copy of the Settlement Indenture was included with the letter from HE to the Member.

20. On June 24, 2009, HE, as applicant, completed the Member's application form to open an in-trust account, as well as the Member's Trust Information form, with the assistance of the

Respondent. The application was completed in the name of “HE in trust for client FM Alter Ego Trust 2009”. Client FM was identified on the Trust Information form as the beneficiary of the in-trust account.

21. The Member reviewed and approved the application documents and the in-trust account was opened on June 29, 2009. On June 30, 2009, client FM’s investments in his non-registered accounts were transferred to the in-trust account. On June 30, 2009, the value of the in-trust account was \$759,185.15.

22. The Respondent assumed that the Member was aware of his designation as a beneficiary of the in-trust account because HE had included a copy of the Settlement Indenture with HE’s initial letter to the Member on May 25, 2009.¹ The Respondent did not himself independently disclose to his branch manager or compliance staff at the Member that he was a beneficiary of the in-trust account.

23. At all material times, Section 10.2 of the Member’s PPM outlined “Examples of Conflict of Interest Situations” that could give rise to a conflict of interest. Specific to “beneficiary relationships” the Member’s PPM stated, “[Y]ou must not permit a client to name you as a beneficiary of his or her estate or of a particular Investors Group account.”

24. On January 25, 2012, at or around the time of client FM’s death, the Respondent advised the Member in writing that he had been named as the beneficiary of the in-trust account. Notwithstanding his designation as the beneficiary of the in-trust account, the Respondent did not accept any of the proceeds from the account, which went instead to client FM’s children.

25. On May 17, 2012, the Member issued a warning letter to the Respondent for failing to comply with the Member’s conflict of interest guidelines in relation to his designation as a beneficiary of the in-trust account.

¹ Prior to October 2010, the Member’s procedures did not require an applicant to provide a copy of the supporting documents in respect of an in-trust account. There is no evidence that the staff processing the account application reviewed the Settlement Indenture that was submitted in this case. The Member has since enhanced its procedures with respect to the opening of in-trust accounts.

Conflict of Interest: Monetary Gift from Client FM

26. On July 14, 2009, client FM gifted \$309,475 to the Respondent through a “Deed of Gift” that was signed by both client FM and the Respondent, and witnessed by HE. The gift proceeds came from the sale of client FM’s condominium.

27. The Respondent deposited the gift proceeds into his personal bank account. The proceeds remained in the Respondent’s personal bank account until December 21, 2011, when he deposited \$309,475 into client FM’s in-trust account at the Member. The Respondent was never comfortable receiving the gift from client FM.

28. In January 2012, HE contacted the Respondent to request that he reverse the deposit because of adverse legal and tax implications for the in-trust account. The Respondent subsequently redeemed \$309,475 from the in-trust account and deposited the proceeds back into his personal bank account.

29. From 2009 to 2012, the Respondent did not disclose to his branch managers or anyone at the Member that he had received a \$309,475 gift from client FM.

30. On July 13, 2012, following the death of client FM in January 2012, SM sent her aforementioned letter of complaint to the Member alleging, among other things, that the Respondent had received a \$309,475 gift from her father in July 2009.

31. On January 25, 2013, the Respondent issued a \$309,475 bank draft payable to SM’s legal counsel in trust, representing the return of the \$309,475 gift he had received from her father in July 2009.

32. At all material times, Section 10.2 of the Member’s PPM outlined “Examples of Conflict of Interest Situations” that could give rise to a conflict of interest. In particular, the Member’s PPM stated:

Any conflict or potential conflict of interest that arises must be immediately disclosed in writing to the client prior to Investors Group proceeding with the proposed transactions giving rise to the conflict or potential conflict. Whenever you feel you may be facing a potential conflict of interest, it is important that the

issue be discussed with your Branch Manager who may consult with Compliance to determine appropriate resolution.

33. On February 4, 2013, the Member issued a second warning letter to the Respondent for failing to disclose to the Member that he had engaged in personal financial dealings with a client by accepting the monetary gift from client FM in 2009.

Misleading the Member

34. The Member distributed Annual Consultant Certifications (“ACCs”) to its mutual fund salespersons each June which required them to respond to compliance related questions, concerning, among other things, whether they had been designated as a beneficiary of a client’s account or had received gifts from clients.

35. From 2009 to 2012, Question Q1 of the 2009 ACC stated, in part:

Q: “I have not received or provided any monetary or non-monetary gifts to or from clients, other than non-monetary gifts of a nominal value (gifts to family members are not subject to restriction).”

36. The Respondent answered “True” to this question in 2009, 2010, 2011 and 2012, despite the fact that he was in receipt of the gift of \$309,475 from client FM for all or substantially all of those years.

37. In 2009 and 2010, the ACC did not include a question about being named as beneficiary of client accounts. In 2011, the Member expanded the scope of the ACC to address that issue. Question Q2 of the 2011 and 2012 ACC’s stated, in part:

Q: “Except in the case of family as clients, I am not aware of being named beneficiary of a client’s estate or any client account held with Investors Group”.

38. The Respondent answered “True” to this question on the 2011 ACC. The Respondent answered “False” to this same question in 2012, however, at the time he did so, he had already disclosed to the Member in writing on January 25, 2012 that he had been named as the beneficiary of the in-trust account following the death of client FM.

Additional Considerations

39. The Respondent has no prior disciplinary history with the MFDA, and was a dealing representative for more than 20 years. He has cooperated fully with Staff's investigation and with the Member.
40. Client FM received independent legal advice in relation to each transaction at issue.
41. There was no borrowing, lending or outside business arrangement between the Respondent and client FM.
42. No client suffered any financial or other harm as a result of the Respondent's actions.
43. The monetary gift was made by client FM with the benefit of independent legal advice and without solicitation from the Respondent.

V. THE RESPONDENT'S POSITION

44. The Respondent did not seek to take advantage of client FM whose interests were at all times protected by client FM's independent legal advisor. The in-trust account was established, by way of written instructions from, and managed by client FM's lawyer.
45. The Respondent understood that client FM did not have the support and assistance of client FM's family in dealing with these matters and agreed to accept the power of attorney because of the Respondent's close friendship with client FM.
46. The Respondent reluctantly accepted the monetary gift at client FM's insistence, as thanks for helping client FM sell his condominium and assisting in his transition to a suitable retirement care facility. The Respondent counselled client FM to attempt to reconcile with his family and to leave client FM's estate to client FM's family.
47. The Respondent offered his support to client FM without any expectation of personal gain. Rather, the Respondent's support and assistance was provided out of empathy for a man who, in the Respondent's view, needed assistance and who was the Respondent's close friend.

VI. CONTRAVENTIONS

48. The Respondent admits that:

- (a) From March 16, 2009 to July 16, 2009, he accepted and held a power of attorney from client FM in favour of himself, contrary to MFDA Rule 2.3.1(a);
- (b) From May 22, 2009 to July 11, 2012, he was designated as a beneficiary of client FM's in-trust account at the Member, thereby giving rise to a conflict or potential conflict of interest between client FM and the Respondent, which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rule 2.1.4;
- (c) From July 2009 to January 2013, the Respondent engaged in personal financial dealings with client FM by accepting a monetary gift of \$309,475, thereby giving rise to a conflict or potential conflict of interest between client FM and the Respondent, which the Respondent failed to ensure was addressed 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; and
- (d) He misled the Member by falsely answering the Member's Annual Consultant Certifications by stating that:
 - (a) in 2009, he did not hold a POA over any clients at the Member;
 - (b) in 2011, he was not aware of being named as the beneficiary of a client's estate or any client account held with the Member; and
 - (c) in 2009, 2010, 2011 and 2012, he had not received any monetary gifts from clients,

thereby interfering with the ability of the Member to supervise his conduct and comply with its obligations under MFDA Rule 2.1.4, contrary to MFDA Rules 1.1.2 and 2.1.1

VII. TERMS OF SETTLEMENT

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

- (a) the Respondent shall pay a fine in the amount of \$10,000 pursuant to section 24.1.1(b) of By-law No. 1;
- (b) the Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1;
- (c) 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 one year pursuant to s. 24.1.1(e) of MFDA By-Law No. 1; and
- (d) the Respondent will attend in person, on the date set for the Settlement Hearing.

VIII. STAFF COMMITMENT

50. 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 the facts set out in Part IV and the contraventions described in Part VI of this Settlement Agreement, subject to the provisions of Part X below. 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 Parts IV and VI of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and VI, 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.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

51. Acceptance of this Settlement Agreement shall be sought at a hearing of the Pacific Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

52. 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.

53. 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.

54. 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.

X. FAILURE TO HONOUR SETTLEMENT AGREEMENT

55. 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 Part IV of the 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.

XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

56. 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.

57. 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.

XII. DISCLOSURE OF AGREEMENT

58. 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.

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

XIII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 2nd day of June, 2015.

“Kenneth Karasick”

Kenneth Karasick

“J. Brent Maclean”

Witness - Signature

J. Brent Maclean

Witness - Print name

“Shaun Devlin”

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President, Member Regulation - Enforcement



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**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: Kenneth Brian Karasick

ORDER

WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated June 2, 2015 (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 By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that:

1. From March 16, 2009 to July 16, 2009, the Respondent accepted and held a power of attorney from client FM in favour of himself, contrary to MFDA Rule 2.3.1(a).
2. From May 22, 2009 to July 11, 2012, the Respondent was designated as a beneficiary of client FM's in-trust account at the Member, thereby giving rise to a conflict or potential conflict of interest between client FM and the Respondent, which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rule 2.1.4.

3. From July 2009 to January 2013, the Respondent engaged in personal financial dealings with client FM by accepting a monetary gift of \$309,475, thereby giving rise to a conflict or potential conflict of interest between client FM and the Respondent, which the Respondent failed to ensure was addressed 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.

4. The Respondent misled the Member by falsely answering the Member's Annual Consultant Certifications by stating that:

(a) in 2009, he did not hold a POA over any clients at the Member;

(b) in 2011, he was not aware of being named as the beneficiary of a client's estate or any client account held with the Member; and

(c) in 2009, 2010, 2011 and 2012, he had not received any monetary gifts from clients,

thereby interfering with the ability of the Member to supervise his conduct and comply with its obligations under MFDA Rule 2.1.4, contrary to MFDA Rules 1.1.2 and 2.1.1

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

1. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents 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;

2. the Respondent shall pay a fine in the amount of \$10,000 pursuant to section 24.1.1(b) of By-law No. 1;

3. the Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1; and

4. 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 one year pursuant to s. 24.1.1(e) of MFDA By-Law No. 1.

5. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.1.1 and 2.1.4.

DATED this 3rd day of June, 2015.

Name,
Chair

Name,
Industry Representative

Name,
Industry Representative