



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: Patrick Pasquale Caicco

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated March 6, 2015, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Patrick Pasquale Caicco (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Notice of Hearing set out the following allegations:

Allegation #1: Between May 12, 2009 and March 12, 2010, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$3.35 million of investment products to at least 33 clients and other individuals outside the Member, contrary to MFDA Rules 1.1.1 and 2.1.1, and sections 13.7 and 13.8 of National Instrument 31-103.

Allegation #2: Between May 12, 2009 and March 12, 2010, the Respondent had and continued in another gainful occupation which was not disclosed to and approved by the Member by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$3.35 million of investment products to at least 33 clients and other individuals outside the Member, contrary to MFDA Rules 1.2.1(d)¹ and 2.1.1.

II. IN PUBLIC / IN CAMERA

3. The Respondent and Staff of the MFDA (“Staff”) agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

III. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent is:

(a) a permanent prohibition on the Respondent’s capacity to conduct securities related business while in the employ of, or sponsored by, any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

(b) the payment of a fine in the amount of \$50,000.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and

(c) the payment of costs of the investigation in the amount of \$5,000.00, pursuant to section 24.2 of MFDA By-law No. 1.

¹ On December 3, 2010, MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c).

IV. AGREED FACTS

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

7. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

Registration History

8. From May 12, 2009 to March 12, 2010, the Respondent was registered in Ontario as a mutual fund salesperson (now referred to as a dealing representative in the category of mutual fund dealer) with Professional Investments (Kingston) (“Professional Investments”), a Member of the MFDA.

9. Prior to the Respondent’s registration with Professional Investments, he had been intermittently registered in the securities industry in various capacities since approximately 1992. The Respondent is not currently registered in the securities industry in any capacity.

10. During the material time, the Respondent resided and carried on business in Ottawa, Ontario.

Allegation #1: Securities related business outside the Member

11. On or about February 9, 2009, the Respondent incorporated Advantage Wealth Building Strategies Inc. (“Advantage”) in the province of Ontario. Advantage purportedly carried on business providing wealth coaching and wealth planning services.

12. The Respondent never sought or obtained permission from Professional Investments to engage in any outside business activities through Advantage.

a) Skyline Apartment REIT

13. The Skyline Group of Companies (“Skyline”) is a real estate acquisition, management and investment company. The Skyline Apartment REIT was launched in 2006, and is one of Canada’s largest multi-residential real estate owners and managers.

14. From May 12, 2009 to March 12, 2010, the Respondent recommended, sold, facilitated the sale or made referrals in respect of the sale of at least \$1,343,449 of investments in the Skyline Apartment REIT to at least 21 investors outside of Professional Investments.² Four of the investors were clients of Professional Investments and they invested a total amount of approximately \$232,016.

15. At the time of these sales or referrals, the Skyline Apartment REIT was not approved by Professional Investments for sale by its Approved Persons, including the Respondent. The Respondent did not seek or obtain approval from Professional Investments with respect to his involvement in the sale or referral of the Skyline Apartment REIT. None of the sales or referrals of the Skyline Apartment REIT were processed through the facilities or for the account of Professional Investments. Professional Investments did not have a referral arrangement with Skyline.

16. All of the Respondent’s sales or referrals of investments in the Skyline Apartment REIT were facilitated through Advantage. The Respondent received a 1% referral fee from Skyline relating to the sales or referrals of the Skyline Apartment REIT, which amounts were paid to Advantage.

² In total from February 27, 2009 to March 15, 2010, the Respondent referred or facilitated the investment of at least \$2,400,000 of Skyline Apartment REIT to at least 30 investors.

17. None of the investors in the Skyline Apartment REIT who were sold or referred to the investment by the Respondent have complained to the MFDA or to Professional Investments.

b) The Assaly Group

18. The Assaly Group of Companies (the “Assaly Group”) carried on business as a diversified real estate organization engaged in the development and management of residential and commercial properties in Canada and the US. The Assaly Group included but was not limited to: Assaly Financial Corporation, Act 1 Corp., Assaly Investment Program Corporation, Millennium Springs Development & Construction Corp., Assaly Credit & Trade Inc. and Thomas C. Assaly Charitable Foundation (“Foundation”). Thomas G. Assaly (“Assaly”) was the president and sole director of the various corporate entities that formed the Assaly Group other than the Foundation, where he was the Chairman of the Board.

19. Between 2009 and 2012, Assaly through various Assaly Group corporations undertook several developments, including the following two projects:

(a) Nature’s Walk Gated Community (“Nature’s Walk”); and

(b) Villa Montague

a. Nature’s Walk

20. Nature’s Walk was promoted as a development which would include a gated community of 20 condominiums and a golf course. The Nature’s Walk development included a 56 acre parcel of land and an abutting 100 acre parcel of land in North Grenville, Ontario. An Offering Memorandum was issued by Assaly Investment Program Corp. in March 2009 for the Nature’s Walk development.

21. The Respondent was the sole promoter of the Nature’s Walk investment. During the course of Staff’s investigation, he admitted that he assisted in the creation of the investment

product and marketing materials for the investment product, and that he solicited investments in the project.

22. The Respondent initially told prospective investors that the investment was being structured as a mortgage investment corporation which would hold a mortgage on Assaly's farm. Prospective investors were told they would receive an annual income of approximately 10% for a period of 5 years on their investment.

23. During the time the Respondent was registered with Professional Investments³, he facilitated investments in the Nature's Walk development by a total of 21 investors in the total amount of approximately \$1,838,000. Five of the 21 investors were clients of Professional Investments.

24. Twelve of the 21 investors paid \$1,036,000 in cash for their investments, which were to be held outside their RRSP's. The other 9 investors invested a total of \$802,000 using monies in their RRSP's.

25. Shortly after the investors advanced their monies for their investments in Nature's Walk, Assaly directed that the investment be restructured. The 12 investors who paid cash for their investments became Preferred A shareholders of Millennium Springs Development & Construction Corp. ("Millennium"), a company owned and controlled by Assaly. Millennium was purportedly the developer of the Nature's Walk project.

26. For the investors who held their investments in Nature's Walk in their RRSP's, their investments were restructured as a syndicated mortgage. The syndicated mortgage was not secured by the lands forming the Nature's Walk project but by an adjacent parcel of land consisting of wetlands which was valued at significantly less (approximately \$40,000) than the total amount that had been paid by these investors for their investments (\$802,000).

³ The Respondent facilitated investments in Nature's Walk in the months prior to being registered at Professional Investments. The MFDA does not have jurisdiction over the activity engaged in by the Respondent prior to becoming an Approved Person. The Respondent did not disclose his involvement in that activity to Professional Investments at the time of his registration or thereafter.

27. The investors in the Nature's Walk project received monthly dividends and interest payments respectively until approximately February 2011, when the payments stopped.

b. Villa Montague

28. Villa Montague was structured as a Real Estate Investment Pool ("REIP"). The project purportedly involved the redevelopment of an existing retirement residence in Smiths Falls, Ontario through renovations and expansion. An investor who purchased a unit in the REIP was supposed to receive regular payments of income, with a guarantee by Assaly Credit & Trade Inc. to buy back units from the investors in the year 2020.

29. During the time the Respondent was registered with Professional Investments, the Respondent recommended, sold, facilitated the sale or made referrals in respect of an investment in the amount of at least \$171,000 in Villa Montague to one individual outside of Professional Investments. (The individual was not a client of Professional Investments.)

30. At the time of these sales or referrals of investments in Nature's Walk and Villa Montague, Assaly Group investment products were not approved by Professional Investments for sale by its Approved Persons, including the Respondent. The Respondent did not seek or obtain approval from Professional Investments with respect to his involvement in the sale or referral of the Assaly Group investment products. None of the sales of the Assaly Group investment products were processed through the facilities or for the account of Professional Investments. Professional Investments did not have a referral arrangement with the Assaly Group.

31. All of the Respondent's sales or referrals of investments in Nature's Walk and Villa Montague were made or facilitated through Advantage. The Respondent received a 3% referral fee from the Assaly Group relating to the sales or referrals of investments in Nature's Walk and Villa Montague, which amounts were paid to Advantage.

Legal proceedings by investors in the Assaly Group investment products

32. After the investors in the Assaly Group projects stopped receiving payments on their investments in February 2011, they eventually sued the Assaly Group in an attempt to recover their initial investment and any remaining amounts owing to them. The investors allege, among other things, that the Assaly Group investments were fraudulent in nature and that Assaly used investment proceeds for his personal benefit.

33. On or about April 27, 2013, the Ottawa Citizen published an article in which the Respondent was named as the financial advisor who had, between 2009 and 2010, facilitated the investment of approximately \$3.3 million into two real estate development projects promoted by the Assaly Group. Professional Investments saw the article and reported the matter to the MFDA. Shortly thereafter, Staff began its investigation into the Respondent's activities.

34. A Court appointed inspector in the legal proceedings determined that the Nature's Walk and Villa Montague projects "are hopelessly insolvent and in stages of abandonment". There is no reasonable prospect that the investors will recover the full amount of their investments.

Professional Investments' Policies and Procedures

35. At all material times, Professional Investments' policies and procedures, consistent with MFDA requirements, required all Approved Persons to report in writing all outside business activities to Professional Investments and to obtain their prior approval before commencing any outside business activities. Professional Investments required all of its Approved Persons, including the Respondent, to complete a Standard Associate Agreement and an Advisor Update Form listing any dual occupations or outside business activities.

36. On January 26, 2009, the Respondent completed the Standard Associate Form without disclosing his involvement with Skyline or the Assaly Group. The Respondent completed two (2) additional Advisor Update Forms without disclosing his involvement with Skyline or the Assaly Group.

Summary of Allegation #1

37. In summary, during the time the Respondent was registered at Professional Investments, he sold, recommended, referred or facilitated the sale of approximately \$3,352,449 of investments in the Skyline Apartment REIT, Nature's Walk and Villa Montague to 33 clients and other individuals, for which he received sales commissions, referral fees or other compensation in the amount of approximately \$73,704, all of which was paid to Advantage.

38. By engaging in the conduct described above, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of Professional Investments, contrary to MFDA Rules 1.1.1 and 2.1.1 and sections 13.7 and 13.8 of National Instrument 31-103.

Allegation #2 – Undisclosed dual occupations

39. To the extent any of the activity described in Allegation #1 above did not constitute securities related business, then the Respondent had and continued in another gainful occupation that was not disclosed to and approved by Professional Investments, contrary to MFDA Rules 1.2.1(d)⁴ and 2.1.1.

Misconduct Admitted

40. By engaging in the conduct described above, the Respondent admits that:

- (a) between May 12, 2009 and March 12, 2010, he engaged in securities related business that was not carried on for the account and through the facilities of the Member by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$3.35 million of investment products to at least 33 clients and other individuals outside the Member, contrary to MFDA

⁴ See Note 1 above.

Rules 1.1.1 and 2.1.1, and sections 13.7 and 13.8 of National Instrument 31-103;
and

(b) between May 12, 2009 and March 12, 2010, he had and continued in another gainful occupation which was not disclosed to and approved by the Member by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$3.35 million of investment products to at least 33 clients and other individuals outside the Member, contrary to MFDA Rules 1.2.1(d)⁵ and 2.1.1.

Execution of Agreed Statement of Facts

41. This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.

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

DATED this 22nd day of June, 2015.

“Patrick Pasquale Caicco”

Patrick Pasquale Caicco

“Shaun Devlin”

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President, Member Regulation -
Enforcement

DM 435502 v1

⁵ On December 3, 2010, MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c).