



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: Sanjeev Kumar Duggal

Heard: March 26, 2015 in Toronto, Ontario
Reasons for Decision: May 4, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney	Chair
Robert Christianson	Industry Representative
Michael Elliott	Industry Representative

Appearances:

David Halasz)	For the Mutual Fund Dealers Association of
)	Canada
)	
Sanjeev Kumar Duggal)	In Person
)	
)	

BACKGROUND

1. We were constituted as a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) to consider a settlement agreement dated March 19, 2015¹ (the “Settlement Agreement”) between the MFDA and Sanjeev Kumar Duggal, (the “Respondent”), which had been published but not within the 10 days’ notice required by the MFDA Rules.

2. The parties brought a joint motion for an order abridging the time requirement of the MFDA. The Hearing Panel made the order as requested.²

3. The Hearing Panel ordered that the proceedings be moved *in camera*.³

4. The Hearing Panel then considered the Settlement Agreement and heard submissions from Counsel on why the Settlement Agreement was reasonable and appropriate. The Hearing Panel retired to consider whether or not to accept the Settlement Agreement. The Hearing Panel accepted the Settlement Agreement and signed an Order dated March 26, 2015 which provides, in summary:

- a) that the Respondent pay a fine of \$40,900, payable in instalments to June 27, 2016;
and
- b) costs of \$2,500.

5. The Chair said that brief reasons for the Hearing Panel’s decision would follow. These are those reasons.

¹ Exhibit 4

² MFDA Rules of Procedure 1.3, 1.5 and 2.2

³ MFDA Rules of Procedure 15.2.2

CONTRAVENTIONS

6. The Respondent admits that between in or about December 2009 and June 2011, he referred one (1) client to a company that sold mortgage investment products and received \$60,500 in referral fees for doing so, thereby participating in a referral arrangement to which the Member was not a party and which did not otherwise comply with sections 13.7 and 13.8 of National Instrument 31-103.

THE MATERIAL FACTS

7. Since December 20, 2010, the Respondent has been registered in Ontario as a mutual fund salesperson with FundEX Investments Inc. (“FundEX”).

8. Prior to FundEX, the Respondent was registered as a mutual fund salesperson with IPC Investment Corporation (“IPC”) from April 3, 2000 until December 20, 2010.

9. In May 2012, the Ontario Securities Commission (“OSC”) advised Staff that the Respondent had received payments from Waterview Capital Corp. (“Waterview”) in connection with a referral by the Respondent of an investor to purchase investments in Waterview.

10. Waterview was an exempt market dealer whose registration, as well as its principal’s, was suspended by the OSC on April 25, 2011 following a compliance examination by OSC Staff which identified numerous violations, including that Waterview did not maintain know-your-client forms for some investors, traded without registration while suspended and sold investments to a non-accredited investor.

11. Prior to its suspension, Waterview sold investments that included interests in mortgage securities on certain properties.

12. In December 2009, a representative of Waterview advised the Respondent that he was raising money for real estate investments. Subsequently, client AS, whose accounts the

Respondent serviced at IPC, advised the Respondent that he was interested in investing in real estate. The Respondent provided client AS with the contact information of the Waterview representative.

13. There is no evidence that the Respondent acted in any further capacity as an intermediary between client AS and Waterview.

14. Over a period of approximately one-and-a-half years, client AS invested a total of \$850,000 in Waterview on three occasions, and Waterview made payments to the Respondent in the total amount of \$60,500 for referring client AS to Waterview.

15. Waterview was not an investment approved by IPC or FundEX for sale by its Approved Persons, including the Respondent. The transactions involving Waterview were not processed for the account or through the facilities of IPC or FundEX.

16. The Respondent did not disclose to IPC or FundEX that he was making referrals in respect of Waterview. IPC and FundEX did not have a referral arrangement with Waterview.

17. During the material time, IPC and FundEX each had written policies and procedures that prohibited their Approved Persons from, among other things, entering into a referral arrangement directly with another person or entity.

18. FundEX issued a letter of reprimand to the Respondent on May 28, 2012 for the undisclosed referral arrangement and commissions payment. FundEX placed the Respondent on strict supervision which expired in January 2013. To date, a total of \$24,600 in fees has been collected by FundEX from the Respondent's commissions in respect of the strict supervision and client mailings.

SUBMISSIONS OF COUNSEL

19. Staff of the MFDA (“Staff”) referred to National Instrument 31-103 which prohibits a registrant from participating in a referral arrangement except in certain limited conditions. He said these provisions allow a Member properly to control, monitor and train its Approved Persons.

20. Staff urged the Hearing Panel to accept the Settlement Agreement in the public interest. He stressed, in particular, the importance of deterrence and disgorgement of any earnings by an Approved Person from his misconduct.

ANALYSIS

21. The Respondent breached sections 13.7 and 13.8 of National Instrument 13-103 and for that he must be punished to deter him and others who might engage in such behaviour. The proposed fine of \$40,900 takes into account the \$24,600 in fees the Respondent has already paid to the Member. When the Respondent has paid the proposed fine in addition to the amount paid to the Member, the Respondent will have disgorged the referral fee, plus an additional \$5,000 fine. The Respondent will also pay costs of \$2,500.

22. This case is similar to two other cases recently decided by this Hearing Panel,⁴ all of which are based on similar facts. The penalties proposed are consistent with those imposed in the other two cases.

23. The Hearing Panel considered the following mitigating factors:

- a) The Respondent has not previously been the subject of MFDA disciplinary proceedings.

⁴ *Rajpal (Re)*, [2015] Hearing Panel of the Central Regional Council, File No. 201362, Hearing Panel Decision dated April 1, 2015; *Mahmood (Re)*, [2015] Hearing Panel of the Central Regional Council, File No. 201365, Hearing Panel Decision dated April 1, 2015.

- b) The Respondent has cooperated with Staff during its investigation. Moreover, by agreeing to the Settlement Agreement he has saved the necessity of a hearing with its attendant costs.
- c) The Respondent has already paid \$3,000 to the MFDA.
- d) There were no complaints against the Respondent or any evidence of investor loss.

DECISION

24. The Hearing Panel unanimously approves the Settlement Agreement for the reasons above.

DATED this 4th day of May, 2015.

“Terrance A. Sweeney”

Terrance A. Sweeney
Chair

“Robert Christianson”

Robert Christianson
Industry Representative

“Michael Elliott”

Michael Elliott
Industry Representative

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