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: Frank Joseph Stolarz

Heard: October 20, 2016, in Halifax, Nova Scotia
Reasons for Decision: November 4, 2016

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

George W. MacDonald, QC	Chair
Susan Nixon	Industry Representative
Darrell Bing	Industry Representative

Appearances:

Paul Blasiak	)	Counsel for the Mutual Fund Dealers Association of Canada
Wendy Sun	)	Counsel for the Respondent

1. As a result of a settlement agreement dated July 18, 2016 (the "Settlement Agreement") between the Mutual Fund Dealers Association of Canada (the "MFDA") and Frank Joseph Stolarz (the "Respondent"), a copy of which is available on the MFDA website and is not set out in detail here, a Settlement Hearing was conducted on October 20, 2016 in Halifax, Nova Scotia. The Hearing Panel heard oral submissions from Staff of the MFDA ("Staff"), and received written submissions on behalf of MFDA dated October 17, 2016. Respondent's Counsel advised the Panel that she agreed with the submissions of MFDA and the Terms of Settlement set out therein.

2. The actions of the Respondent alleged by the MFDA and admitted by the Respondent are set out in the Settlement Agreement and are as follows:

> a. In July 1999, client SE opened a spousal Retirement Income Fund account with Investors Group (the "**RIF Account**"). The RIF Account was in client SE's name, and designated her spouse, client LE, as the sole contributor and beneficiary.
>
> b. In January 2001, the Respondent became the mutual fund salesperson at Investors Group responsible for servicing client SE's accounts, including the RIF Account. Client SE's spouse, LE, also became a client of the Respondent.
>
> c. Commencing in December 2007, client SE entered into a Systematic Withdrawal Plan ("**SWP**"), which stipulated that each month a payment of $310 would be transferred out of the RIF Account and deposited to client SE's bank account (the "**Bank Account**").
>
> d. From December 2007 to August 2013, in accordance with the SWP, monthly payments of $310 (less withholding taxes) were transferred from the RIF Account to the Bank Account.
>
> e. On two occasions the Respondent acted on the following requests from client LE, the spouse of client SE, to increase the monthly SWP payments that were being made from client SE's RIF Account:

f. in August 2013, client LE requested that the Respondent increase client SE's monthly SWP payment from $310 to $620; and

g. in September 2013, client LE requested that the Respondent increase client SE's monthly SWP payment to $1,000.

h. There was no power of attorney or similar authorization from client SE on file that authorized the Respondent to act on the request of client SE's spouse on behalf of client SE in regard to the RIF Account.

i. From October 2013 to July 2014, monthly SWP payments of $1,000 were transferred out of the RIF Account and deposited to the Bank Account. In August 2014, the final SWP payment was made, which reduced the balance in the RIF Account to zero.

j. On August 13, 2013, the Respondent processed two mutual fund switches in client SE's RIF Account without discussing the switches with client SE or obtaining her authorization. In particular, the Respondent:

(i) processed a transfer in the amount of $371.88 from the "IG Retirement Plus Portfolio C" fund to the "IG Canadian Balanced Fund C" fund; and

(ii) processed a transfer in the amount of $168.86 from the "IG Dividend Fund C" fund to the "IG Canadian Balanced Fund C" fund.

3. The violations of the By-Laws, Rules, or Policies of MFDA alleged by MFDA and admitted by the Respondent are set out in the Settlement Agreement as follows:

a) between August 2013 and September 2013, the Respondent processed increases to monthly payments made pursuant to a client's Systematic Withdrawal Plan based on requests from someone other than the client (the client's spouse), contrary to MFDA Rules 2.3.1 and 2.1.1; and

b) on August 13, 2013, the Respondent processed two mutual fund switches in the account of one client without the client's authorization, contrary to MFDA Rules 2.3.1 and 2.1.1.

4. MFDA Staff and the Respondent agreed to the following Terms of Settlement:

a) the Respondent shall pay a fine in the amount of $15,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
b) the Respondent shall pay costs in the amount of $2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
c) the Respondent shall in the future comply with MFDA Rules 2.3.1 and 2.1.1; and
d) the Respondent will attend in person on the date set for the Settlement Hearing.

5. The following salient facts are agreed to by MFDA and the Respondent:

a) The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) in Nova Scotia since January 1986, and in New Brunswick since May 2004, with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA.
b) The Respondent was also registered with Investors Group in Ontario from July 2010 to December 2013, and in Quebec from August 2007 to December 2009.
c) At all material times, the Respondent conducted business in the Dartmouth, Nova Scotia area.
d) Investors Group became aware of the conduct that is the subject of the Settlement Agreement after it received a complaint from client SE in December 2014 regarding the unauthorized increases to her SWP.
e) In June 2015, Investors Group reviewed 25 of the Respondent's client files to determine if the Respondent had processed unauthorized trades in the clients' accounts. No instances of unauthorized trading were identified.
f) On June 30, 2015, Investors Group issued a cautionary letter to the Respondent regarding the conduct described above. The cautionary letter instructed the Respondent to always obtain authorization from the client prior to processing trades in the client's account and to maintain written documentation evidencing the client's authorization of the trade.

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

h) The Respondent cooperated with Investors Group's investigation into his conduct.

i) The Respondent did not receive any financial benefit from engaging in the misconduct described in this Settlement Agreement.

Acceptance of Settlement Agreement

6. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

7. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.

8. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct, recognizes its seriousness, and has exhibited remorse.

9. The penalty imposed is not out of line with recent cases cited by counsel and is consistent with the MFDA Penalty Guidelines.

10. Hearing Panels should not interfere lightly in negotiated settlements and should not reject a Settlement Agreement unless it considers the proposed penalty clearly falls outside a reasonable range. The penalty agreed to in this case does fall within a reasonable range.

11. For the above reasons we accept the Settlement Agreement dated July 18, 2016.

DATED this 4th day of November, 2016.

"George W. MacDonald"

George W. MacDonald, QC
Chair

"Susan Nixon"

Susan Nixon
Industry Representative

"Darrell Bing"

Darrell Bing
Industry Representative

DM 509533 v1