



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: Anthony MacFarlane

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, 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 Central 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, Anthony MacFarlane.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of Mr. MacFarlane’s activities. The investigation disclosed that Mr. MacFarlane had engaged in activity for which Mr. MacFarlane 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 Mr. MacFarlane recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. Mr. MacFarlane 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 Mr. MacFarlane 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 Mr. MacFarlane 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 Mr. MacFarlane 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 XI) 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 October 2003 to July 2008, Mr. MacFarlane was registered in Ontario as a mutual fund salesperson with Ten Star Financial Inc. (“Ten Star”).

7. At all material times, Mr. MacFarlane was licensed to sell insurance. He did so through a corporation he operated, Meridian Wealth Management Ltd. (“Meridian”) and maintained a bank account (the “Meridian bank account”) for that purpose.

8. Mr. MacFarlane was terminated by Ten Star on July 16, 2008, as a result of the events described below. He is not currently registered in the securities industry in any capacity.

9. Ten Star became a member of the MFDA on April 12, 2002.

Allegation #1 – Failure to invest Client JN’s Monies

10. In August 2007, client JN instructed her employer to transfer a termination allowance in the amount of \$10,595.25 to Meridian. The termination allowance was scheduled to be paid in late November 2007, at the time JN's employment was ending.

11. In preparation for the payment of the termination allowance, JN met with Mr. MacFarlane in November 2007, and completed an account application form which was to be used to open a Registered Retirement Savings Plan account and invest the termination allowance once it was received from JN's employer (the "RRSP Application").

12. During the meeting, JN provided Mr. MacFarlane with a copy of a Direct Transfer of an Eligible Termination Allowance / Retirement Allowance form, which JN had provided to her employer, indicating that the termination allowance would be paid directly to Meridian.

13. On or about November 30, 2007, JN's employer issued a cheque in the amount of \$10,595.25 payable to Meridian (the "Allowance Cheque"). The Allowance Cheque was delivered to Mr. MacFarlane's office on the same day.

14. On or about December 5, 2007, the Allowance Cheque was deposited in the Meridian bank account.

15. Mr. MacFarlane states that he was not in the office when the Allowance Cheque was received. He states that his assistant DP received the Allowance Cheque, and without any instruction from Mr. MacFarlane, that she inadvertently deposited the Allowance Cheque into the Meridian bank account.

16. At the time Mr. MacFarlane's office received the Allowance Cheque, he did not submit the RRSP Application to Ten Star or otherwise invest the termination allowance on behalf of JN.

17. Mr. MacFarlane states that he was unaware that the Allowance Cheque had been received and that it had been deposited into the Meridian bank account.

18. On or about December 28, 2007, JN sent an email to Mr. MacFarlane inquiring whether he had received the Allowance Cheque, as JN wanted to ensure that the termination allowance was invested into an RRSP for the 2007 tax year. JN also requested a meeting with Mr. MacFarlane to discuss the transfer of her pension from her (now) former employer.

19. On or about January 2, 2008, Mr. MacFarlane sent a reply email to JN stating:

...there is a pile of mail at the office and I expect your [Allowance] cheque is in there...I believe [DP] mentioned to me that there was an envelope sent on your behalf as we have been expecting it.

20. On or about January 7, 2008, Mr. MacFarlane sent an email to JN advising her that, based upon her income and the investment of the termination allowance, he expected JN to receive an income tax refund from the Canada Revenue Agency (the "CRA") when she filed her income tax return for the 2007 tax year.

21. In about April 2008, Mr. MacFarlane prepared and filed with the CRA, JN's income tax return for the 2007 tax year (the "Tax Return"). In the Tax Return, Mr. MacFarlane reported that JN had made an RRSP contribution in the amount of \$10,595.25 (i.e., the amount of JN's termination allowance). Mr. MacFarlane knew or ought to have known that the Tax Return was false and misleading because he knew he had not yet arranged for the termination allowance to be contributed to an RRSP, nor was he in possession of a contribution receipt indicating that JN had made an RRSP contribution in that amount by any other means. (As a result of Mr. Macfarlane's conduct, the Tax Return was later reassessed by the CRA.)

22. On or about April 29, 2008, JN sent an email to Mr. MacFarlane requesting "documentation" indicating how the termination allowance had been invested. Mr. MacFarlane sent a reply email, the same day, stating that he would forward the documentation as requested.

23. On May 6, 2008, having received no materials from Mr. MacFarlane, JN sent an email to Mr. MacFarlane again requesting documentation pertaining to the investment of the termination allowance.

24. On May 8, 2008, Mr. MacFarlane sent a reply email to JN claiming that he had “requested some additional information for your records from the fund company” and would personally deliver a package of materials to her the following week.
25. On or about May 15, 2008, JN picked up a package of materials from Mr. MacFarlane’s office. The package did not include documentation regarding the termination allowance.
26. On May 16, 2008, JN sent an email to Mr. MacFarlane, once again, requesting documentation pertaining to the investment of the termination allowance.
27. At about this time, JN contacted the London Police Department regarding Mr. MacFarlane’s failure to account for the handling of her termination allowance.
28. On or about May 20, 2008, Mr. MacFarlane was contacted by the London Police Department about his handling of the termination allowance. Mr. MacFarlane sent an email to JN, on the same day, stating that he would provide JN with the documentation that she had requested by the end of the week.
29. On or about May 21, 2008, Mr. MacFarlane:
- (a) obtained a bank draft in the amount of \$10,642.15 drawn on the Meridian bank account payable to Ten Star;
 - (b) altered the RRSP Application as follows:
 - i. he changed the type of account to be opened from RRSP to LIRA;
 - ii. he changed the amount of JN’s initial investment from \$10,595.25 to \$10,642.15;¹
 - iii. he changed the date on which the RRSP Application was signed from a date in November 2007 to May 11, 2008; and

¹ This change reflected Mr. MacFarlane’s estimate of the change in the value of the investment between November 2007 (when the termination allowance ought to have been invested) and May 11, 2008 (when the termination allowance was actually invested).

(c) submitted the bank draft and the altered RRSP Application to Ten Star.

30. Upon receipt of the bank draft and the altered RRSP Application from Mr. MacFarlane, Ten Star deposited the amount of \$10,642.15 into a LIRA opened in JN's name.

31. At no time did JN instruct Mr. MacFarlane to contribute the termination allowance to a LIRA. JN had specifically instructed Mr. MacFarlane, and completed the RRSP Application, to contribute the termination allowance to an RRSP.

32. On or about May 22, 2008, Mr. MacFarlane sent a letter to JN stating, in part:

...I am enclosing a copy of the log for your RSP investment with Dynamic Funds. As you were previously informed, due to errors in the transfer of this amount from your previous employer, this did not show up correctly in our records. The error was corrected and the fund company correctly processed the deposit. Your current balance is \$10,642.15 based on an initial deposit of \$10,595.00...

33. Mr. MacFarlane's letter was false and misleading in the following respects:

- (a) there had been no errors in the transfer of the termination allowance from JN's previous employer; and
- (b) JN's investment had not previously appeared in Ten Star's records and, as such, no error in Ten Star's records was required to be corrected.

34. On or about May 29, 2008, JN submitted a complaint to Ten Star regarding Mr. MacFarlane and his handling of the termination allowance. Following the completion of its investigation, Ten Star reversed the LIRA transaction (as described in paragraph 23) and processed the contribution of the termination allowance, backdated to December 2007, into an RRSP account. Ten Star terminated Mr. MacFarlane effective July 16, 2008.

35. As described in greater detail below, Mr. MacFarlane gave an undertaking, during an interview with MFDA Staff in August 2009, to provide copies of the Meridian bank account statements for the period December 2007 to May 2008. Mr. MacFarlane has failed to produce copies of the bank statements. However, Mr. MacFarlane admits that the Allowance Cheque

was deposited into the Meridian bank account and the monies were not used in accordance with JN's instructions, or otherwise used for JN's benefit, during the period December 2007 to May 2008.

Allegation #2 – Failure to Disclose Outside Business Activities

36. Between about January 2005 and March 2008, Mr. MacFarlane provided income tax return preparation services for approximately 10-20 clients (including JN) and other individuals.² Mr. MacFarlane charged fees of between \$40 and \$100 per income tax return.

37. At all material times, Ten Star's policies and procedures prohibited its Approved Persons from engaging in any outside business activities unless the activities were disclosed to and approved by Ten Star.³

38. In November 2006, March 2008 and April 2008, Ten Star provided its Approved Persons, including Mr. MacFarlane, with Dual Occupation Disclosure Questionnaires (the "OBA Questionnaires"), which required Mr. MacFarlane to disclose any business activities which did not relate to the sale of mutual funds. Mr. MacFarlane did not respond to the OBA Questionnaires.

39. Mr. MacFarlane provided income tax preparation services for a small number of clients. He did so as a personal service to them, always disclosing that he was not an accountant.

Allegation #3 - Failure to cooperate with an MFDA investigation

40. On August 5, 2009, Mr. MacFarlane was interviewed by MFDA Staff with respect to the events described above. During the interview, Mr. MacFarlane gave a number of undertakings to provide certain information and documentation requested by MFDA Staff. Among other things, Mr. MacFarlane undertook to provide MFDA Staff with copies of the Meridian bank account statements for the period December 2007 to May 2008.

² As a result of Mr. MacFarlane's failure to cooperate with the investigation conducted by MFDA Staff, the precise number of clients and other individuals for whom Mr. MacFarlane prepared income tax returns is not known to MFDA Staff.

³ Mr. MacFarlane had previously sought and obtained approval from Ten Star to sell insurance.

41. Notwithstanding repeated requests by MFDA Staff, Mr. MacFarlane failed to answer his undertakings, including the undertaking to provide the Meridian bank account statements. However, Mr. MacFarlane admits above, that the Allowance Cheque was deposited into the Meridian bank account and the monies were not used in accordance with JN's instructions, or otherwise used for JN's benefit, during the period December 2007 to May 2008.

Additional Factors

42. Mr. MacFarlane has not previously been the subject of MFDA disciplinary proceedings.

43. Other than the complaint made by JN, MFDA Staff has not received other client complaints regarding Mr. MacFarlane's conduct.

V. THE RESPONDENT'S POSITION

44. Mr. MacFarlane states that the period from late 2007 until present has been exceedingly difficult for him. He states that, during this time, he has faced many personal challenges and suffered significant personal loss which resulted in a serious toll on his health. These matters are addressed in a separate brief to be filed with the Hearing Panel by Mr. MacFarlane.⁴ Mr. MacFarlane states that it is against this backdrop that the facts and circumstances set out in Allegation # 1 and # 3 took place.

45. Mr. MacFarlane states that he is regretful of the conduct described above.

VI. CONTRAVENTIONS

46. Mr. MacFarlane admits the following contraventions of the By-laws, Rules and Policies of the MFDA:

- (a) between about December 2007 and May 2008, Mr. MacFarlane received \$10,595.25 from client JN which he failed to invest on her behalf and account for,

⁴ Mr. Macfarlane, with the consent of MFDA Staff, will request that the Hearing Panel direct that the brief filed regarding Mr. Macfarlane's medical history remain confidential and not be disclosed to any non-party to this proceeding.

thereby failing to deal fairly, honestly and in good faith with client JN, contrary to MFDA Rule 2.1.1;

- (b) between about January 2005 and March 2008, Mr. MacFarlane engaged in another gainful occupation, being the preparation of income tax returns for clients and other individuals, which was not disclosed to and approved by the Member, contrary to MFDA Rule 1.2.1(d); and
- (c) commencing in August 2009, Mr. MacFarlane failed to provide information and produce documents requested during the course of an investigation of his conduct, contrary to section 22.1 of MFDA By-law No. 1.

VII. TERMS OF SETTLEMENT

47. Mr. MacFarlane agrees to the following terms of settlement:

- (a) Mr. MacFarlane shall for a period of 5 years be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- (b) Mr. MacFarlane shall pay a fine in the amount of \$7,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, payable as follows:
 - i. \$2,500 payable upon approval of the settlement;
 - ii. \$2,500 payable on or before March 31, 2011; and
 - iii. \$2,500 payable on or before April 30, 2011;
- (c) Mr. MacFarlane shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1, on or before April 30, 2011; and
- (d) if Mr. MacFarlane fails to comply with subparagraphs (b) or (c), then without further notice to Mr. MacFarlane, Mr. MacFarlane 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.

VIII. STAFF COMMITMENT

48. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against Mr. MacFarlane 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 Mr. MacFarlane from fulfilling any continuing regulatory obligations.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

49. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and Mr. MacFarlane.

50. Staff and Mr. MacFarlane may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and Mr. MacFarlane 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 Mr. MacFarlane in this matter, and Mr. MacFarlane 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.

51. Staff and Mr. MacFarlane agree that if this Settlement Agreement is accepted by the Hearing Panel, then Mr. MacFarlane 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.

52. Staff and Mr. MacFarlane agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor Mr. MacFarlane will make any public statement inconsistent

with this Settlement Agreement. Nothing in this section is intended to restrict Mr. MacFarlane from making full answer and defence to any civil or other proceedings against it him.

X. FAILURE TO HONOUR SETTLEMENT AGREEMENT

53. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, Mr. MacFarlane 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 Mr. MacFarlane 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, Mr. MacFarlane 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

54. 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 Mr. MacFarlane 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.

55. Whether or not this Settlement Agreement is accepted by the Hearing Panel, Staff and Mr. MacFarlane agree that they 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

56. 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 Mr. MacFarlane and Staff or as may be required by law.

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

XIII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: February 14, 2011

“Anthony MacFarlane”

Anthony MacFarlane

Witness - Signature

Witness - Print name

“Shaun Devlin”

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



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**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Anthony MacFarlane

ORDER

WHEREAS on July 22, 2010, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to MFDA By-law No. 1 in respect of the Respondent, Anthony MacFarlane ("MacFarlane");

AND WHEREAS MacFarlane entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which MacFarlane agreed to a proposed settlement of matters for which MacFarlane 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 MacFarlane contravened the By-laws, Rules and Policies of the MFDA as follows:

- (a) between about December 2007 and May 2008, MacFarlane received \$10,595.25 from client JN which he failed to invest on her behalf and account for, thereby

failing to deal fairly, honestly and in good faith with client JN, contrary to MFDA Rule 2.1.1;

- (b) between about January 2005 and March 2008, MacFarlane engaged in another gainful occupation, being the preparation of income tax returns for clients and other individuals, which was not disclosed to and approved by the Member, contrary to MFDA Rule 1.2.1(d); and
- (c) commencing in August 2009, MacFarlane failed to provide information and produce documents requested during the course of an investigation of his conduct, contrary to section 22.1 of MFDA By-law No. 1.

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

1. MacFarlane shall for a period of 5 years be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.
2. MacFarlane shall pay a fine in the amount of \$7,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, payable as follows:
 - i. \$2,500 payable upon approval of the settlement;
 - ii. \$2,500 payable on or before March 31, 2011; and
 - iii. \$2,500 payable on or before April 30, 2011.
3. MacFarlane shall pay costs in the amount of \$2,500.00 pursuant to s. 24.2 of MFDA By-law No. 1, on or before April 30, 2011.
4. If MacFarlane fails to comply with paragraphs 2 and 3, then without further notice to Macfarlane, MacFarlane 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.

