



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: Douglas Elia Tuitakalai

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, Douglas Elia Tuitakalai (the “Respondent”).

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 section 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. ACKNOWLEDGMENT

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 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 September 17, 2013 to February 27, 2018, the Respondent was registered in Ontario as a dealing representative with Investors Group Financial Services Inc. (the “Member”), a Member of the MFDA.

7. At all material times, the Respondent carried on business in the Brampton, Ontario area.

8. The Respondent is not currently registered in the securities industry in any capacity.

Personal Financial Dealings with a Client

9. At all material times, the Member’s policies and procedures prohibited its Approved Persons from engaging in personal dealings with clients.

10. In or around early 2017, the Respondent and members of his family entered into agreements of purchase and sale to purchase two condominium units in a building that was under construction.

11. In or around March 2017, the Respondent met with MR and conducted a personal financial review and gathered Know Your Client information about MR, with a view to MR opening investment accounts with the Member. At this time, MR did not open investment accounts with the Member. During this meeting, the Respondent learned that MR had an interest in purchasing real estate.

12. Shortly after this meeting, MR told the Respondent that she was interested in purchasing a condominium unit in the same building where the Respondent and his family members had purchased their yet to be built units.
13. At this time, the Respondent and his family members were no longer interested in completing their purchase of the condominium units. The Respondent offered MR an opportunity where the Respondent and his family members would assign the agreements of purchase and sale for the two condominium units in exchange for a \$17,000 payment from MR. The Respondent explained to MR that the \$17,000 was to pay the assignment and legal fees required to complete the transfers of the condominium units to MR.
14. MR agreed to the arrangement, but the assignments could not be done until a designated assignment period later in 2017.
15. Beginning in May 2017, MR opened accounts and became a client of the Member whose accounts were serviced by the Respondent.
16. In October 2017, MR obtained a \$17,000 bank draft, which she gave to the Respondent in accordance with the arrangement for the assignment of the agreements of purchase and sale for the two condominium units described above.
17. On or about October 30, 2017, the Respondent deposited the \$17,000 bank draft into his personal bank account.
18. In November 2017, MR complained to the Member that she had given her advisor \$17,000 on a real estate deal that she no longer wished to proceed with. MR declined to identify her advisor, but from the information provided, the Member was able to identify that MR was describing the Respondent.
19. In or around January 2018, the Respondent returned the \$17,000 to MR.
20. The Respondent's activities gave rise to a conflict or a potential conflict of interest, which the Respondent did not disclose to the Member.

Outside Activity

21. At all material times, the Member's policies and procedures required its Approved Persons to obtain prior approval from the Regional Director and the Vice-President, Financial Services responsible for their region before engaging in an outside business activity.
22. On or about March 15, 2017, the Respondent disclosed to his Division Director, SB, that he engaged in the purchase and resale of real estate. SB told the Respondent that he needed to complete an Outside Activity approval form and obtain approval from the Member to engage in this activity.
23. On the same day, SB's assistant emailed a copy of the Member's Outside Activity approval form to the Respondent.
24. The Respondent did not complete and submit the Outside Activity approval form to the Member. The Respondent did not obtain approval for his real estate activities from the Regional Director and Vice President, Financial Services responsible for his region.
25. On or about September 19, 2017, the Respondent entered into a partnership agreement with a third party to purchase, renovate, and re-sell a real estate property. The purchase of the real estate property was completed on or about October 20, 2017.
26. The Respondent did not disclose his intention to purchase, renovate, and re-sell a real estate property with a third party to the Member or obtain the Member's prior approval to engage in that outside activity in accordance with its policies and procedures.

Failure to Cooperate

27. On or about March 13, 2018, Staff of the MFDA ("Staff") commenced an investigation into the Respondent's conduct concerning his personal financial dealings with client MR described above, and other matters.
28. On June 7, 2019, the Respondent attended an interview with MFDA Staff to answer questions concerning matters under investigation.
29. During the course of the interview, the Respondent undertook to provide Staff with additional documents and answer questions concerning certain transactions that appeared in his banking records.

30. On June 7, 2019, following the interview, Staff sent a letter to the Respondent's counsel, listing the requested documents and information that the Respondent had agreed to provide during the interview, and requested a response enclosing the requested materials by June 21, 2019.
31. On June 25, 2019, counsel for the Respondent provided a partial response to the documents and information requested by Staff. Counsel for the Respondent advised Staff that the Respondent was obtaining additional documentation to answer Staff's requests.
32. On July 17, 2019, Staff sent an email to the Respondent's counsel requesting the outstanding documents and information.
33. On September 3, 2019, Staff sent a follow up request for the outstanding documents and information to the Respondent's counsel.
34. On September 11, 2019, counsel for the Respondent advised that she was no longer representing the Respondent.
35. On September 23, 2019, Staff sent a letter to the Respondent by process server, requesting that the Respondent provide the outstanding documents and information by October 7, 2019. The process server attempted to deliver the letter on September 28, 2019 at the address provided by the Respondent during his interview, but was unable to locate the Respondent at the address.
36. On September 30, 2019, the process server attempted to serve a copy of the September 23, 2019 letter to the Respondent at the Respondent's former address, where Staff had previously sent correspondence to the Respondent. The Respondent's father accepted service of the letter.
37. The Respondent did not reply to Staff's correspondence and did not provide the outstanding documents and information requested by Staff.
38. On October 25, 2019, Staff sent an email to the Respondent, asking him to contact Staff by telephone.
39. The Respondent did not reply to Staff's email and did not contact Staff.
40. By failing to provide the documents and information requested by Staff in furtherance of its investigation of his conduct, the Respondent has undermined Staff's ability to determine the

full nature and extent of his activities in relation to the misconduct described herein, including the extent to which he engaged in personal financial dealings with clients other than MR.

Additional Factors

41. The Respondent has not previously been subject to MFDA disciplinary proceedings.
42. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

V. CONTRAVENTIONS

43. The Respondent admits that commencing in or about May 2017, he engaged in personal financial dealings with a client with respect to an arrangement to assign agreements of purchase and sale for two properties from the Respondent and his family members to the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1, and 1.1.2.
44. The Respondent admits that commencing on or about October 17, 2017, he had and continued in an outside activity with respect to the purchase and resale of real estate that was not disclosed to or approved by the Member, contrary to the Member's policies and procedures and MFDA Rules 1.3.2, 2.1.1, 1.1.2, and 2.5.1.
45. The Respondent admits that commencing on or about September 23, 2019, he failed to cooperate with MFDA Staff's investigation into his conduct by withholding certain documentation and information relevant to Staff's investigation, contrary to section 22.1 of MFDA By-law No. 1.

VI. TERMS OF SETTLEMENT

46. The Respondent agrees to the following terms of settlement:
 - a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
 - b) the Respondent shall pay a fine of \$40,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
 - c) the Respondent shall pay costs of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1; and

- d) the Respondent will attend the Settlement Hearing in person or by videoconference.

VII. STAFF COMMITMENT

47. 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 contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, 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.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

48. 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 the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

49. 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 or appeal 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.

50. 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 section 24.1.1 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of By-law No. 1.

51. 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.

52. 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.

IX. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

53. 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.

54. 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.

X. DISCLOSURE OF AGREEMENT

55. 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.

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

XI. EXECUTION OF SETTLEMENT AGREEMENT

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

58. An electronic copy of any signature shall be effective as an original signature.

DATED this 8th day of January, 2021.

“Douglas Elia Tuitakalai”

Douglas Elia Tuitakalai

“WC”

Witness – Signature

WC

Witness – Print Name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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Re: Douglas Elia Tuitakalai

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a News Release announcing 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 entered into between Staff of the MFDA ("Staff") and the Respondent, Douglas Elia Tuitakalai (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to sections 20 and 24.1 of MFDA By-law No. 1;

AND WHEREAS based upon the admissions of the Respondent, the Hearing Panel is of the opinion that the Respondent:

- a) commencing in or about May 2017, the Respondent engaged in personal financial dealings with a client with respect to an arrangement to assign agreements of purchase and sale for two properties from the Respondent and his family members to the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1, and 1.1.2;

- b) commencing on or about October 17, 2017, the Respondent had and continued in an outside activity with respect to the purchase and resale of real estate that was not disclosed to or approved by the Member, contrary to the Member's policies and procedures and MFDA Rules 1.3.2, 2.1.1, 1.1.2, and 2.5.1; and
- c) commencing on or about September 23, 2019, the Respondent failed to cooperate with MFDA Staff's investigation into his conduct by withholding certain documentation and information relevant to Staff's investigation, 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. The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-law No. 1.
2. The Respondent shall pay a fine of \$40,000 in certified funds on the date of this order, pursuant to section 24.1.1(b) of MFDA By-law No. 1.
3. The Respondent shall pay costs of \$5,000 in certified funds on the date of this order, pursuant to section 24.2 of MFDA By-law No. 1.
4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 797922