



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: James Russell Taylor

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, James Russell Taylor.

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 s. 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 IX) 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

6. The Respondent has been a mutual fund salesperson since 1990. Between April 12, 2002 and January 9, 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative¹) with FundEX Investments Inc. (the “Member”), a Member of the MFDA.

7. The Respondent resigned from the Member on or about January 9, 2016.

8. At all material times, the Respondent conducted business in Etobicoke, Ontario.

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

Acting as Executor and Being Named a Beneficiary of Clients’ Wills

Client TJ

10. At all material times, client TJ was a client of the Member and the Respondent was the mutual fund salesperson responsible for serving client TJ’s accounts. Client TJ had been a client of the Respondent since 1993.

¹ When National Instrument 33-102 came into effect on September 28, 2009, the registration category formerly known as ‘mutual fund salesperson’ was changed to ‘dealing representative’.

11. Client TJ named the Respondent in her will as a co-executor/trustee of her estate in or about 2003. In or about October 2006, client TJ passed away and the Respondent was subsequently appointed as co-executor/trustee.

12. Beginning in 2011, the Member revised its policies and procedures to prohibit its Approved Persons from being named and/or acting as an executor/trustee for a client's estate and continuing to act as an advisor for the client and/or the client's estate. In the same year, the Member conducted an Annual Associate Compliance Audit (the "Audit") of the Respondent's activities. The Audit confirmed that the Respondent was acting as an executor/trustee for two clients (including client TJ), so the Member directed the Respondent to resign any positions he held as executor/trustee at the time or move the clients' accounts to another Member.

13. Following the Audit, client TJ's non-registered accounts, representing over 75% of TJ's assets, were transferred from the Member. However, the Respondent continued to service two RESP accounts controlled by the estate of client TJ until about October 2015.

14. The Respondent states that he attempted to transfer the RESP accounts outside the Member to another advisor, but did not receive instructions from the co-executor/trustee.

Client BT

15. At all material times, client BT was a mutual fund client of the Member. The Respondent was the mutual fund salesperson who serviced client BT's accounts. Client BT had been a client of the Respondent since 1990. Client BT named the Respondent as co-executor/trustee in her Last Will and Testament in 2002.

16. In or about 2010, following the passing of the other co-executor/trustee, client BT named the Respondent in her Last Will and Testament as the sole executor and trustee of her estate. The will made the Respondent, as the sole executor and trustee, responsible for the management of a charitable foundation to be formed with the residue of client BT's estate following her death. Client BT also named the Respondent as the beneficiary of certain Air Miles reward points.

17. The Respondent was provided with a copy of client BT's wills in May 2010.

18. On November 7, 2014, client BT passed away. At the time of her passing, client BT held one TFSA with the Member, valued at approximately \$5,000.

19. On or about June 5, 2015, the Respondent accepted an appointment as executor/trustee of client BT's estate and administered all aspects of client BT's estate, including distributing the proceeds of client BT's TFSA investment account at the Member and her other assets.

20. On July 8, 2015, the Respondent accepted client BT's Air Miles reward points, which the Respondent advises were 3054 reward points with a cash value of less than \$500.

Failure to Cooperate

21. On October 13, 2015, the Ontario Securities Commission referred an anonymous complaint dated September 30, 2015 (the "OSC Complaint") to Staff of the MFDA ("Staff"). The complaint alleged that the Respondent was serving as an executor and was a beneficiary of the estates of two Member clients whose mutual fund accounts he serviced.

22. On October 16, 2015, Staff together with the Member conducted an on-site inspection of the Respondent's business location. The Respondent cooperated with the on-site inspection and agreed to an interview by the Member on that date.

23. From October 21, 2015 to December 3, 2015, Staff repeatedly wrote to the Member requesting that the Respondent provide a written statement concerning the allegations in the OSC Complaint.

24. The Member advised the Respondent of Staff's request on November 2, 2015.

25. Subsequently, the Member advised Staff that the Respondent had retained counsel and that a response to Staff's inquiries would be forthcoming.

26. Staff did not receive a response from the Respondent or his counsel to its inquiries.

27. On December 16, 2015, the Member wrote to Staff and advised that the Respondent had submitted a resignation notice to the Member.

28. Accordingly, on the same date, Staff sent a letter directly to the Respondent (copied to his counsel), requesting that he provide a written response to Staff's inquiries by January 15, 2016. Neither the Respondent nor his counsel responded to the letter.

29. On January 18, 2016, Staff sent a second letter to the Respondent by registered mail (copied to his counsel), requesting that he provide a written response to the allegations contained in the OSC Complaint. Staff's letter advised the Respondent of his obligation to cooperate with Staff's investigation pursuant to section 22.1 of MFDA By-law No. 1. The letter further stated that if the Respondent failed to respond by February 2, 2016, Staff could seek to commence a disciplinary proceeding against the Respondent for failure to cooperate.

30. The registered letter was accepted at the Respondent's business address by his assistant.

31. Staff did not receive a response to the letter from the Respondent or his counsel

32. On May 4, 2016, Staff followed up with the Respondent's counsel and learned that the Respondent was no longer represented.

33. On May 27, 2016, Staff sent and delivered a third letter to the Respondent by process server. Staff repeated its requests for information and documents that Staff had requested in the previous correspondence. Staff informed the Respondent that if he failed to respond, Staff could seek authorization to commence a proceeding for failing to cooperate with Staff's investigation. Staff asked the Respondent to provide a response by June 6, 2016.

34. Staff did not receive a response to the letter from the Respondent.

35. On or around July 27, 2016, the Member received an anonymous complaint letter concerning the Respondent's handling of estate funds. Staff also intended to investigate this complaint during the interview of the Respondent.

36. By letter dated October 4, 2016 and delivered to the Respondent by process server, Staff informed the Respondent that an interview between Staff and the Respondent was scheduled to take place on November 16, 2016. The Respondent was asked to confirm his attendance at the interview by November 1, 2016.

37. Staff did not receive a response from the Respondent to Staff's letter.

38. The Respondent failed to attend the interview that was scheduled to take place on November 16, 2016 and failed to provide the outstanding documents and information that had been requested by Staff.

Additional Factors

39. 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.

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

V. CONTRAVENTIONS

41. The Respondent admits that commencing in 2011, he acted as an executor for deceased client TJ's estate, contrary to the Member's policies and procedures and MFDA Rules 2.3.1, 2.1.4, 1.1.2 and 2.5.1, and 2.1.1.

42. The Respondent admits that commencing in 2011, he was aware that he was named as executor and trustee and a beneficiary of client BT's estate, and following client BT's death, acted as executor and trustee for deceased client BT's estate and accepted a benefit from the estate, contrary to the Member's policies and procedures and MFDA Rules 2.3.1, 2.1.4, 1.1.2 and 2.5.1, and 2.1.1.

43. The Respondent admits that commencing November 2015, he failed to cooperate with an investigation in to his conduct by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

VI. TERMS OF SETTLEMENT

44. 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 in the amount of \$40,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
 - (i) \$20,000 in certified funds upon acceptance of the Settlement Agreement;
 - (ii) \$10,000 in certified funds on or before the last business day of the sixth month following the acceptance of the Settlement Agreement; and
 - (iii) \$10,000 in certified funds on or before the last business day of the twelfth month following the acceptance of the Settlement Agreement;
- c) the Respondent shall pay costs in the amount 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 in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

45. 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

46. 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.

47. 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 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.

48. 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 s. 24.1.1 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.

49. 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.

50. 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

51. 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.

52. 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

53. 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.

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

XI. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 17th day of July, 2019.

“James Russell Taylor”

James Russell Taylor

“AS”

Witness – Signature

AS

Witness – Print Name

“Shaun Devlin”

Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

Schedule "A"

Order

File No. 2017118



Mutual Fund Dealers Association of Canada
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**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: James Russell Taylor

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 MFDA should accept the settlement agreement entered into between Staff of the MFDA ("Staff") and the Respondent, James Russell Taylor (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 ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent:

- a) commencing in 2011, was aware that he was named as executor and trustee and was named as a beneficiary for deceased client BT's estate and that, commencing in June 2015, he acted as executor for the deceased client BT's estate, contrary to

the Member's policies and procedures and MFDA Rules 2.3.1, 2.1.4, 1.1.2 and 2.5.1, and 2.1.1;

- b) commencing in 2011, acted as an executor for deceased client TJ's estate contrary to the Member's policies and procedures and MFDA Rules 2.3.1, 2.1.4, 1.1.2 and 2.5.1, and 2.1.1; and
- c) commencing November 2015, failed to cooperate with an investigation in to his conduct by Staff of the MFDA, 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 in the amount of \$40,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
 - a) \$20,000 in certified funds upon acceptance of the Settlement Agreement;
 - b) \$10,000 in certified funds on or before [date]; and
 - c) \$10,000 in certified funds on or before [date].
3. The Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, 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 689490