



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: Patrick Hugh Lumbers

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, Patrick Hugh Lumbers.

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. ACKNOWLEDGEMENT

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. Since May 30, 1988, the Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. (“Investors Group”). The Respondent is currently registered in British Columbia, Alberta, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Yukon.

7. At all material times, the Respondent conducted business in Toronto, Ontario.

Client MC

8. From January 2007 to December 31, 2014 when she passed away at age 93, client MC was a client of Investors Group. At all times, client MC’s investment accounts at Investors Group were serviced by the Respondent.

9. Client MC held the following accounts at Investors Group: (1) a non-registered account opened on January 31, 1997 (the “Non-Registered account”); (2) a Registered Retirement Investment Funds (“RRIF”) account opened on December 12, 1997; and (3) a Tax Free Savings Account (“TFSA”) opened on August 31, 2011.

10. At all material times, client MC was elderly, retired and identified had fair investment knowledge.

11. Between 1997 and May 2013, client MC's income consisted of a modest pension including survivor benefits from her deceased husband's pension, Canada Pension Plan benefits and Government of Canada Old Age Benefits, and automated monthly withdrawals from her RRIF account. By the end of 2012, client MC's pension income was approximately \$37,000 per year and total annual withdrawals from her RRIF account were approximately \$2,400.

Client MC's Purchase of Mutual Funds Subject to Deferred Sales Charges ("DSC")

Schedules

12. Between about December 2012 and February 2013, client MC advised the Respondent that she was considering selling her condominium and moving into a retirement residence. Client MC informed the Respondent that she required the proceeds of the sale of the condominium to pay the monthly costs of the retirement residence.

13. In April 2013, client MC sold her condominium for approximately \$410,402 (the "Condominium Sale Proceeds") and moved into a retirement residence. At the time of sale, the Condominium Sale Proceeds represented a significant portion of client MC's net worth.¹

14. On or about May 1, 2013, client MC met with the Respondent and agreed to transfer \$380,000 of the Condominium Sale Proceeds into the Non-Registered account (the "Transferred Funds"). At that time, the Respondent recommended that client MC invest the Transferred Funds as follows:

- a) \$200,000 in the Investors Dividend B Fund (No Load), which would later be invested in a Guaranteed Income Fund ("GIF Investment");
- b) \$140,000 in the Investors Premium Money Market Fund (DSC);
- c) \$25,000 in the Investors U.S. Large Cap Value B Fund (No Load); and
- d) \$15,000 in the Investors Inter. Small Cap B Fund (No Load).

¹ On April 30, 2013, in addition to the Condominium Sale Proceeds, client MC held mutual investments totaling approximately \$47,700, which included mutual fund investments of approximately \$12,000 in her RRIF account, \$21,400 in her TFSA account and \$14,300 in her Non-Registered account.

15. The Respondent further recommended that client MC make monthly withdrawals of \$2,500 from her Non-Registered account to help pay the \$4,115 monthly fees of her retirement residence.

16. The Respondent prepared a Know-Your Client (“KYC”) update form for client MC stating, among other things, that she was 92 years old, had a time horizon 10+ years, had a medium risk tolerance, and had an investment objective to “leave an estate”. Investors Group did not receive this KYC update form. The only change from prior KYC information on file with Investors Group was a change of the Respondent’s risk tolerance on her non-registered account from high to medium.

17. The Respondent knew or ought to have known that client MC did not have an investment time horizon of 10+ years given that she was 92 years old, and her investment objective should have reflected that she required income to fund her stay in a retirement residence.

18. Prior to submitting the trades described in paragraph 14 above for processing, the Respondent was informed by his branch manager that the contemplated GIF Investment was not permitted given that client MC was more than 90 years old, and therefore too old to qualify for such a product. The Respondent then suggested to the branch manager that the \$200,000 instead be invested in the Investors Dividend A Fund (DSC) rather than the Investors Dividend B Fund (No Load). In response, the branch manager advised and recommended that the Respondent not sell to client MC such an investment, or any other DSC mutual fund, given that DSC mutual funds were not appropriate for client MC.

19. Notwithstanding the branch manager’s advice, the Respondent submitted for processing the following trades in client MC’s Non-Registered account on May 1, 2013:

- a) \$200,000 in the Investors Dividend A Fund (DSC);
- b) \$140,000 in the Investors Premium Money Market Fund (DSC);
- c) \$25,000 in the Investors U.S. Large Cap Value B Fund (no load); and
- d) \$15,000 in the Investors International Small Cap B Fund (no load).

20. At the time of the trades described above or some point thereafter, the Respondent presented client MC with a document titled “Summary of Investors Group Sales Fees”, which explained, among other things, that a 7 year DSC schedule applied to purchases of “Investors “A”

units". The document was not fully completed by either client MC or the Respondent though Client MC did sign it to acknowledge having received it. The document was however not approved for use by Investors Group.

21. On May 15, 2013, the Respondent switched the \$140,000 investment in the Investors Premium Money Market Fund (DSC) described in subparagraph 14(b) to the Investors Real Property Fund A (DSC). This was because Investors Real Property Fund only traded on the 15th and 30th of each month.

22. Both the Investors Dividend A Fund and the Investors Real Property Fund A were subject to 7 year DSC redemption schedules.

23. The Respondent submitted for processing the trades described in paragraphs 19 and 21 above using a Limited Trading Authorization.

24. The trades recommended and submitted for processing by the Respondent as described in paragraphs 19 and 21 above were not suitable for client MC having regard to the essential Know-Your-Client factors relevant to the client, including the client's age, health condition, investment time horizon, and investment objectives.

25. In early 2014, client MC's mental health deteriorated rapidly. As a result, client MC moved into an assisted living facility. The monthly cost of the assisted living facility was approximately \$5,115.

26. The Respondent was aware that client MC's health had deteriorated and her living arrangements had changed as a result.

27. On March 4, 2014, the Respondent sent an email to client MC's son, RC², which stated:

[client MC's] portfolio has increased over the year \$427,725.00 to \$448,958.00 to Dec 2013 and now is currently at \$447,584.32 with a risk tolerance as before allowing equity being High on the grid but her true profile is moderate/conservative and her risk is medium even if her time

² RC was, along with client MC's niece, MC's joint power of attorney for property and personal care.

horizon is 3-6 years. I have always used 10 years for [client MC] [sic]...
[underline added]

28. The Respondent was aware of client MC's health condition, change in living arrangements, and investment time horizon. The Respondent states that he nonetheless saw no need to update client MC's KYC information or reassess the suitability of her investments.

29. On August 28, 2014, as a result of further deterioration of her health, client MC moved into a long term care facility with a corresponding reduction in her monthly expenses.

30. On December 31, 2014, client MC passed away. At that time, the investments held in her Investors Group accounts would have triggered \$18,195 in DSCs had they been redeemed.

31. In August 2015, RC, acting in his capacity as executor of client MC's estate, submitted a complaint to Investors Group requesting that any DSCs triggered by the redemption of client MC's investments be waived on the basis that those investments were unsuitable and should never have been recommended to client MC given her age and living arrangements.

32. In response to the complaint, Investors Group agreed to reimburse client MC's estate for any DSCs incurred on the redemption of MC's investments. On June 6, 2016, all of the DSC investments held by client MC's estate at Investors Group were redeemed and Investors Group reimbursed client MC's estate for these fees.³

Additional Factors

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

34. The Respondent has cooperated with Staff during its investigation and during this disciplinary proceeding.

35. The Respondent is remorseful and, by entering into this Settlement Agreement, he has avoided the need for a prolonged hearing on the merits.

³ All DSCs, totaling \$10,180.96, were reimbursed.

36. The Respondent's Member, Investors Group, no longer permits its Approved Persons to sell mutual funds subject to DSC fees.

V. CONTRAVENTIONS

37. As a result of the above, the Respondent admits that:

- a) Between May 2013 and March 2014, he failed to learn, or update material changes to, the essential Know-Your-Client information for a 92 year old client's accounts, contrary to MFDA Rules 2.2.1, 2.2.4, and 2.1.1; and
- b) In May 2013, he recommended for the account of a 92 year old client the purchase of approximately \$340,000 of mutual funds which were subject to a 7 year deferred sales charge schedule, without ensuring that the recommendation was suitable having regard to the essential Know-Your-Client factors relevant to the client, including the client's age, health condition, investment time horizon, and investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

VI. TERMS OF SETTLEMENT

38. Upon acceptance of this Settlement Agreement, the Respondent agrees to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$20,000 (the "Fine"), pursuant to section 24.1.1(b) of By-law No. 1;
- b) the Respondent shall pay the costs (the "Costs") of this proceeding and investigation in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
- c) The Fine and Costs are to be paid by the Respondent as follows:
 - i. An initial payment to the MFDA in the amount \$7,500 upon acceptance of this Settlement Agreement; and
 - ii. Commencing 30 days following acceptance of this Settlement Agreement, 6 additional, and consecutive, monthly installment payments in the amount of \$2,500 until the Fine and Costs are paid in full; and
- d) The Respondent shall attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

39. 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 facts set out in Part IV and 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 facts and contraventions that are not set out in Parts IV and V 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 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

40. 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.

41. 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.

42. 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.

43. 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.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

44. 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.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

45. 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.

46. 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.

XI. DISCLOSURE OF AGREEMENT

47. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 25th day of March, 2019.

“Patrick Hugh Lumbers”

Patrick Hugh Lumbers

“KDS”

Witness – Signature

KDS

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. 201825



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: Patrick Hugh Lumbers

ORDER

WHEREAS on January 30, 2018, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to section 24.4 of By-law No. 1 in respect of Patrick Hugh Lumbers (the “Respondent”);

AND WHEREAS in accordance with s. 19.13 of MFDA By-Law No. 1, the first appearance in this proceeding was held by teleconference before a public representative of the Central Regional Council of the MFDA (the “Chair of the Hearing Panel”) on April 25, 2018;

AND WHEREAS during that first appearance Staff and counsel for the Respondent made submissions to the Chair of the Hearing Panel with respect to scheduling and other procedural matters following which the hearing on the merits in this matter was scheduled to be held in the hearing room located at the offices of the MFDA at 121 King Street West, Suite 1000, Toronto, Ontario from September 20-21, 2018 at 10:00 a.m.;

AND WHEREAS on September 20, 2018, the hearing on the merits was adjourned and scheduled to be held on December 13, 2018 at 10:00 a.m.;

AND WHEREAS on December 12, 2018, the hearing on the merits was further adjourned and scheduled to be held on March 26, 2019;

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated March [day], 2019 (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 on March [day], 2019 the MFDA issued a news release announcing that a settlement hearing would be held on the date previously scheduled for the hearing on the merits before a hearing panel of the Central Regional Council (the “Hearing Panel”) to consider the Settlement Agreement (the “Settlement Hearing”), pursuant to section 24.4 of By-law No. 1;

AND WHEREAS the Settlement Hearing was held on March 26, 2019 during which time the Hearing Panel considered the Settlement Agreement and submissions of Staff and counsel for the Respondent;

AND WHEREAS the Hearing Panel is of the opinion that:

1. Between May 2013 and March 2014, the Respondent failed to learn, or update material changes to, the essential Know-Your-Client information for a 92 year old client’s accounts, contrary to MFDA Rules 2.2.1, 2.2.4, and 2.1.1; and
2. In May 2013, the Respondent recommended for the account of a 92 year old client the purchase of approximately \$340,000 of mutual funds which were subject to a 7 year deferred sales charge schedule, without ensuring that the recommendation was suitable having regard to the essential Know-Your-Client factors relevant to the client, including the client’s age, health condition, investment time horizon, and investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

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

1. 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*;

2. the Respondent shall pay a fine in the amount of \$20,000 (the “Fine”), pursuant to section 24.1.1(b) of By-law No. 1;

3. the Respondent shall pay the costs of this proceeding and the MFDA’s investigation in this matter in the amount of \$2,500 (the “Costs”), pursuant to section 24.2 of By-law No. 1; and

4. The Fine and Costs are to paid by the Respondent as follows:

- a) On the date of this order, an initial payment to the MFDA in the amount \$7,500; and
- b) Six additional, and consecutive, monthly installment payments to the MFDA, paid as follows until the Fine and Costs are paid in full:
 - i. On or before April 26, 2019, a payment in the amount of \$2,500;
 - ii. On or before May 26, 2019, a payment in the amount of \$2,500;
 - iii. On or before June 26, 2019, a payment in the amount of \$2,500;
 - iv. On or before July 26, 2019, a payment in the amount of \$2,500;
 - v. On or before August 26, 2019, a payment in the amount of \$2,500; and
 - vi. On or before September 26, 2019, a payment in the amount of \$2,500.

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]