



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: Winston Castle

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, Winston Castle (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 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 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 History

6. The Respondent was registered in Ontario as a mutual fund sales person (now known as a dealing representative) commencing in 1995.

7. From December 3, 1997 to December 31, 2018, the Respondent was registered in Ontario as a mutual fund salesperson with Keybase Financial Group Inc., a Member of the MFDA (the “Member”).

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

9. At all material times, the Respondent carried on business in the Virgil, Ontario area.

The Respondent Purchased Foreign Currency from a Client

10. On June 4, 2013, client ET, an 83 year-old senior, became a client of the Member. At all material times, the Respondent was responsible for servicing client ET’s account.

11. At all material times, the Member’s policies and procedures did not allow its Approved Persons to accept cash from clients. The Member’s policies and procedures also required that:

- a) all monetary and non-monetary benefits, provided directly or indirectly, to or from clients, flow through the Member;
- b) the Member be notified of any such arrangements so that it can determine the significance of the benefit and to determine whether there is a conflict of interest; and
- c) any potential conflict of interest be disclosed immediately to, and receive prior written approval from, the Member.

12. On or about October 23, 2014, the Respondent met with client ET to review her accounts. Client ET advised the Respondent that she would no longer be travelling to the United States due to her health, and was in possession of US dollars. The Respondent offered to purchase from client ET her US dollars, which he subsequently did on two occasions as described below.

13. In or about October or November 2014, the Respondent received a cheque or bank draft for US \$10,000 from client ET, and in exchange provided the client with CAD \$10,800. The Respondent deposited the US \$10,000 from client ET in his personal bank account.

14. On or about October 2, 2015, the Respondent received a cheque or bank draft for US \$8,500 from client ET, and in exchange provided the client with CAD \$10,370. The Respondent deposited the US \$8,500 from client ET in his personal bank account.

15. The Respondent exchanged US dollars with client ET as described above at exchange rates that were lower than market exchange rates, and that were favourable to the Respondent. As a result, the Respondent obtained a profit of approximately CAD \$ 1,286.

16. On July 30, 2017, client ET passed away.

17. On or about August 18, 2017, the Member became aware that the Respondent exchanged foreign currency with client ET as described above, when WT attended at the Member's head office and advised a compliance officer of the Member of WT's concerns with the Respondent's conduct.

18. The Respondent did not disclose to the Member that he exchanged foreign currency with client ET as described above prior to WT's complaint.

19. The Member offered compensation to WT for client ET's loss.

The Respondent Failed to Follow the Member's Policies and Procedures Pertaining to Receiving Instructions from a Third-Party Appointed as a POA on a Client's Account

20. At all material times, under the Member's policies and procedures, the granting of Power of Attorney ("POA") over an existing account was a material change that required, among other things, the Respondent to:

- a) complete and submit to the Member a New Client Application Form ("NAAF") or Know-Your-Client ("KYC") update for the grantor of the POA (i.e. the client) for all affected accounts of the client;
- b) complete and submit to the Member a separate NAAF collecting all necessary information about the attorney for all affected accounts; and
- c) obtain and submit to the Member a notarized copy of the POA.

21. On June 1, 2016, WT, client ET's son, was appointed as POA for property for client ET.

22. On June 20, 2016, WT provided the Respondent with an electronic copy of the POA.

23. Contrary to the Member's policies and procedures, the Respondent:

- a) did not complete and submit to the Member a KYC update for the grantor of the POA for all affected accounts of the client;
- b) did not complete and submit to the Member a separate NAAF collecting all necessary information about the attorney for all affected accounts; and
- c) did not obtain and submit to the Member a notarized copy of the POA.

The Respondent Altered Client Account Forms Without Client Initials

24. At all material times, the Member had policies and procedures that required clients to initial all changes made to client documents.

25. On August 9, 2016 the Member conducted an audit of a sample of files maintained by the Respondent for the period June 1, 2014 to July 31, 2016. The Member indicated, among other

things, that the Respondent had made changes to 7 client account forms without having the client initial the changes, often by using liquid correction fluid.

26. On February 17, 2017, in response to the Member's audit report, the Respondent undertook that he would not alter client account forms without obtaining the client signature, and that he would comply with the Member's policies and procedures.

27. After receiving information from client WT as described above at paragraph 17, the Member conducted a full audit of the Respondent's files, and found additional forms where the Respondent made alterations to information on the forms without having the client initial the alterations.

28. Between September 2013 and October 2017, the Respondent altered and in some instances, used to process transactions, 95 account forms in respect of 18 clients, by altering information on the account forms, without having the client initial the alterations. The alterations that the Respondent made to the account forms included alterations to mutual fund codes and names, and account numbers.

29. The Respondent altered 3 account forms in the period after the 2016 audit when he provided his undertaking not to alter client account forms without obtaining a client's signature.

Member's Investigation

30. In January 2018, the Member sent letters to clients whose accounts the Respondent serviced to determine whether the Respondent had ever asked the clients to sign blank or incomplete account forms, and whether the clients had ever conducted personal business with the Respondent. No clients responded to the Member with any concerns.

Additional Factors

31. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

32. Client ET suffered a loss as a result of the Respondent purchasing foreign currency in a manner that favoured his interest over that of the client. There is no evidence of client loss or that the transactions were unauthorized with respect to account forms altered by the Respondent

described above at paragraphs 24 to 29 or by the Respondent not following the Member's policies and procedures with respect to receiving instructions from a third-party appointed as a POA.

33. The Respondent benefitted from purchasing foreign currency from a client in a manner that favoured his interest over that of the client. There is no evidence that the Respondent received any benefit from altering forms described above at paragraphs 24 to 29 beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

34. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to this settlement, has avoided the necessity of a full hearing on the merits.

V. CONTRAVENTIONS

35. The Respondent admits to the following contraventions of the Rules, Policies and By-law of the MFDA:

- a) between October 23, 2014 and October 2, 2015, the Respondent engaged in personal financial dealings with a client when he purchased foreign currency from a client in a manner that favoured his interests over those of the client, thereby giving rise to a conflict or potential conflict of interest, which the Respondent failed to disclose to the Member, or failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures, and MFDA Rule 2.1.4 and 2.1.1;
- b) commencing June 20, 2016, the Respondent failed to comply with the Member's policies and procedures pertaining to accounts where the Approved Person receives instructions from a third party appointed by a client as a Power of Attorney, contrary to MFDA Rules 2.5.1, 1.1.2, and 2.1.1; and
- c) between January 2011 and October 2017, the Respondent altered and used to process transactions 95 account forms, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

36. The Respondent agrees to the following terms of settlement:

- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 12 months from the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to section 24.1.1(e) of the MFDA By-law No.1;
- b) the Respondent shall pay a fine in the amount of \$20,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which shall be payable in certified funds on the date this Settlement Agreement is accepted by a Hearing Panel;
- c) the Respondent shall pay costs to the MFDA in the amount of \$2,500, pursuant to s.24.2 of MFDA By-law No. 1, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- d) if the Respondent becomes registered again in the future, he shall comply with MFDA Rules 2.1.4, 2.1.1, 1.1.2, 2.5.1; and
- e) the Respondent will attend in person or participate by teleconference on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

37. 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

38. 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.

39. 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.

40. 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.

41. 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

42. 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

43. 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.

44. 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

45. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 28th day of November, 2019.

“Winston Castle”

Winston Castle

“MR”

Witness – Signature

MR

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. 201974



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: Winston Castle

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of [Respondent] (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) between October 23, 2014 and October 2, 2015, the Respondent engaged in personal financial dealings with a client when he purchased foreign currency from a client in a manner that favoured his interests over those of the client, thereby giving rise to a conflict or potential conflict of interest, which the Respondent failed to disclose to the Member, or failed to address by the exercise of responsible

business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures, and MFDA Rule 2.1.4 and 2.1.1;

- b) commencing June 20, 2016, the Respondent failed to comply with the Member's policies and procedures pertaining to accounts where the Approved Person receives instructions from a third party appointed by a client as a Power of Attorney, contrary to MFDA Rules 2.5.1, 1.1.2, and 2.1.1; and
- c) between January 2011 and October 2017, the Respondent altered and used to process transactions 95 account forms, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

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

1. the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 12 months from the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to section 24.1.1(e) of the MFDA By-law No.1;
2. the Respondent shall pay a fine in the amount of \$20,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which shall be payable on the date this Settlement Agreement is accepted by a Hearing Panel;
3. the Respondent shall pay costs to the MFDA in the amount of \$2,500, pursuant to s.24.2 of MFDA By-law No. 1 on the date that this Settlement Agreement is accepted by a Hearing Panel;
4. if the Respondent becomes registered again in the future, he shall comply with MFDA Rules 2.1.4, 2.1.1, 1.1.2, 2.5.1; and

5. 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 720732