
Citation: *Armstrong v. Mutual Fund Dealers Association*, 2017 NBFCS 1

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, c. S-5.5

Date: 2017-02-01
Docket: SE-002-2015

BETWEEN:

Scott C. Armstrong,

Applicant,

-and-

Mutual Fund Dealers Association of Canada,

Respondent.

ORDER

Restriction on publication: This Order has been anonymized to comply with the *Right to Information and Protection of Privacy Act*, S.N.B. 2009, c. R-10.6.

WHEREAS:

1. On January 19, 2011, Staff of the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing commencing disciplinary proceedings against Scott C. Armstrong;
2. An MFDA hearing panel issued a Decision and Reasons and made an Order, both dated September 2, 2011, among other things, permanently prohibiting Scott C. Armstrong from conducting securities related business in any capacity over which the MFDA has jurisdiction, imposing a fine on Mr. Armstrong in the amount of \$51,500, and awarding costs against Mr. Armstrong in the amount of \$5,000;
3. On April 30, 2015, Mr. Armstrong filed a Request for Hearing with the Tribunal seeking a review of the MFDA Decision and Reasons and Order and requesting that the Tribunal vary or set aside the MFDA Decision and Reasons and Order;

4. The Tribunal, in a decision dated June 3, 2016, granted Mr. Armstrong's motion for an extension of time to file the Request for Hearing and expressed serious concerns regarding procedural fairness issues in the disciplinary proceedings conducted by the MFDA hearing panel;
5. On August 10, 2016, Mr. Armstrong and Staff of the MFDA entered into a Settlement Agreement in which they agreed to a proposed settlement of this review proceeding, subject to the approval of the Tribunal;
6. Mr. Armstrong acknowledges in the Statement of Facts contained in the Settlement Agreement that he engaged in personal financial dealings with Complainant 1, by signing a promissory note in the amount of \$62,000 payable by himself to Complainant 1, in satisfaction of debts owed primarily by Armstrong Financial Services Inc., and that he thereafter failed to re-pay Complainant 1 in accordance with the terms of the promissory note, contrary to MFDA Rules 2.1.4 and 2.1.1;
7. The promissory note in the amount of \$62,000 consists of: (1) Complainant 1's investment of \$40,000 in Armstrong Financial Services Inc.; (2) \$12,000 in respect of a previous transaction between Mr. Armstrong and Complainant 1 involving a car repair business; and (3) \$10,000 in respect to other miscellaneous matters;

AND WHEREAS:

1. The Tribunal has reviewed the Settlement Agreement and the Statement of Facts contained therein and agreed upon by the parties;
2. The Tribunal received written submissions from the parties and heard oral submissions from the parties' solicitors at the January 24, 2017 settlement hearing;
3. The Tribunal is of the opinion that it is in the public interest to approve the Settlement Agreement as both the proposed settlement and sanctions agreed to by the parties are within reasonable parameters, taking into consideration the whole of the circumstances, and that they further provide for the making of an appropriate protective and preventative order as well as appropriate specific and general deterrence;

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement, a copy of which is attached to this Order, is approved pursuant to paragraph 191(1)(a) of the *Securities Act*, S.N.B. 2004, c. S-5.5 (the "*Securities Act*");
2. Further, as agreed by the parties, the MFDA Decision and Reasons and the Order dated September 2, 2011 pertaining to Scott C. Armstrong and bearing File No. 201037 are rescinded pursuant to section 44 and subsection 193(6) of the *Securities Act* and the following Order is substituted:
 - a. Scott C. Armstrong is prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction pursuant to s. 24.1.1(e) of MFDA By-Law No. 1 from September 2, 2011 until August 2, 2016, after which date Mr. Armstrong's prohibition shall end and he shall be entitled to apply to be registered to conduct

securities related business in any capacity over which the MFDA has jurisdiction,

- b. Mr. Armstrong shall pay to Complainant 1 the amount of \$30,000.00,
- c. No fine is payable by Mr. Armstrong to the MFDA,
- d. There shall be no costs awarded to any of the parties to this proceeding, and
- e. As agreed by the parties and previously ordered by the MFDA hearing panel, if at any time a non-party to the MFDA proceeding requests production of or access to exhibits in the MFDA proceeding that contain intimate financial or personal information, 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 intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED at the City of Saint John this 1st day of February, 2017.

Judith Keating, Q.C.

Judith Keating, Q.C. Tribunal Chair

Don Moors

Don Moors, Tribunal Member

Jean LeBlanc

Jean LeBlanc, Tribunal Member

PROVINCE OF NEW BRUNSWICK

FINANCIAL AND CONSUMER SERVICES TRIBUNAL

IN THE MATTER OF THE SECURITIES ACT, S.N.B. 2004, c. S-5.5

AND

IN THE MATTER OF **SCOTT C. ARMSTRONG**, Applicant

SETTLEMENT AGREEMENT

1. STAFF TO RECOMMEND SETTLEMENT

Staff of the Mutual Fund Dealers Association of Canada ("Staff") agree to recommend approval of settlement of this matter to a panel of the Financial and Consumer Services Tribunal pursuant to section 191(1)(a) of the *Securities Act*, S.N.B. 2004, c. S-5.5 (the "Act") in accordance with the following terms and conditions:

- a. The Applicant agrees to the Statement of Facts set out in Part II hereof, and consents to the making of an order on the basis of those facts, as set out in Schedule "A"; and
- b. The terms of any settlement will become public information only if, and when, the settlement is approved by the Tribunal.

2. APPLICANT'S OBLIGATIONS IF SETTLEMENT APPROVED

If the Settlement Agreement is approved, the Applicant undertakes to:

- a. Not make any statement which is inconsistent with the Statement of Facts attached hereto; and
- b. Pursuant to the Order as set out in Schedule "A", to pay \$30,000.00 to Complainant 1.

3. PROCEDURE FOR APPROVAL OF SETTLEMENT

- a. Upon execution of the Settlement Agreement by Staff and by the Applicant, Staff will apply to the Tribunal for an order approving the Settlement Agreement.
- b. Immediately after execution of the Settlement Agreement and in any event prior to the hearing to seek approval of the Settlement Agreement, the Applicant will provide the amount due under the settlement to Cox & Palmer in escrow. If the Settlement Agreement is approved, these funds will be paid by Cox & Palmer to Complainant 1. If the Settlement Agreement is not approved, these funds will be returned to the Applicant.
- c. If the Settlement Agreement is approved by the Tribunal, it will constitute the entirety of the evidence to be submitted respecting the Applicant in this matter and the Applicant agrees to waive any right to a hearing, review and/or appeal with respect to this matter.
- d. If, for any reason whatsoever, this settlement is not approved by the Tribunal, or the order set forth in Schedule "A" is not made by the Tribunal:
 - i. Staff and the Applicant will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or the settlement negotiations;
 - ii. The terms of this agreement will not be referred to in any subsequent proceeding or disclosed to any person, except with the written consent of both Staff and the Applicant or as may be required by law; and
 - iii. The Applicant further agrees that he will not raise, in any proceeding, the Settlement Agreement or the negotiation or process of approval thereof, as a basis for any attack on the jurisdiction of the Mutual Fund Dealers Association of Canada.

4. DISCLOSURE OF SETTLEMENT AGREEMENT

- a. The terms of the Settlement Agreement will be treated as confidential by the parties thereto until approved by the Tribunal and forever if, for any reason, the Settlement Agreement is not approved by the Tribunal; and
- b. upon the approval of the Settlement Agreement by the Tribunal, any obligation as to confidentiality shall terminate and the Settlement Agreement will become public information.

5. STAFF COMMITMENT

If this settlement is approved by the Tribunal, Staff will not initiate any other proceeding under the Mutual Fund Dealers Association Rules, the Act, or otherwise, against the Applicant in relation to the facts set out in Part II of this Settlement Agreement.

6. EXECUTION OF SETTLEMENT AGREEMENT

The Settlement Agreement shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

DATED at Toronto, Ontario this 8th day of August, 2016.

"original signed by Shaun Devlin"

Shaun Devlin, Senior Vice President, Member Regulation, Enforcement
for Staff of the Mutual Fund Dealers
Association of Canada

DATED at the City of Saint John this 10 day of August, 2016.

"original signed by Scott C. Armstrong"

Scott C. Armstrong, Applicant

"original signed by Patrick Dunn"

Witness: Patrick Dunn

Part II
STATEMENT OF FACTS

1. Scott C. Armstrong ("Armstrong") is an individual residing in Saint John, New Brunswick.
2. From 1999 until December 30, 2008, Armstrong was registered as a mutual fund salesperson with Armstrong Financial Services Inc. ("AFSI"), a Member of the MFDA.
3. Complainant 1 (C1) is a retired high school principal and was a client of AFSI, whose accounts were serviced by Armstrong.
4. C1 was also a shareholder of AFSI as of April 15, 2002, and became a member of the audit committee of AFSI as of March 24, 2004.
5. In 2007, Armstrong and C1 agreed with the other shareholders of AFSI that Armstrong and C1 would acquire a majority interest in AFSI.
6. C1 invested \$40,000 in AFSI in connection with his intended acquisition of additional shares in 2007. C1 understood that Armstrong would likewise invest \$50,000 in AFSI in connection with the intended acquisition.
7. Armstrong states that as a result of an inability to access corporate records of AFSI and the lack of cooperation on the part of AFSI's compliance officer, neither C1 nor Armstrong were able to obtain evidence of their controlling interest in AFSI.
8. Armstrong states that in or about January or February, 2008, Mr. X contributed \$100,000 to AFSI in exchange for a promissory note from Armstrong and mortgages on a building owned by Armstrong's corporation, Lancaster Fund Management Inc., and on Armstrong's family cottage and residence.
9. Mr. X wished to acquire all of the shares in AFSI.
10. Armstrong, in consultation with his solicitor and accountant, attempted to determine the status of the shareholdings in AFSI, but they were unable to determine same and did not have access to the minute book.
11. Mr. X, as a condition of agreeing to assume control of AFSI, required all possible shareholders of AFSI, including C1, to sign a release of their interest in AFSI and related companies.

12. Armstrong states that Mr. X advised Armstrong that C1 would have his \$40,000 investment in AFSI returned once Mr. X assumed control of AFSI.
13. Armstrong convinced C1 to sign the release of C1's interest in AFSI in exchange for a promissory note by Armstrong in favour of C1 in the amount of \$62,000, consisting of C1's \$40,000 investment in AFSI and \$12,000 in respect of a previous transaction involving a car repair business. Armstrong signed the promissory note in the belief that Mr. X would ensure that C1 was repaid from the assets of AFSI.
14. C1 was paid \$10,000 by cheque from AFSI dated May 17, 2008.
15. Mr. X assumed control of AFSI in August 2008, and changed the name of the corporation to Gateway Capital Growth Inc. ("Gateway").
16. Gateway made no payment to C1 after Mr. X assumed control.
17. Armstrong made a further payment of \$500 to C1 on account of the promissory note, reducing the balance owing to \$51,500.
18. C1 filed a complaint with the MFDA dated November 18, 2008 regarding Armstrong.
19. On December 1, 2008, Armstrong filed for bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as he owed, among other amounts, in excess of \$300,000 to the Canada Revenue Agency
20. Armstrong resigned as an employee of Gateway effective December 30, 2008.
21. Armstrong has not been registered with the MFDA since December 30, 2008.
22. By Notice of Hearing dated January 19, 2011, the MFDA alleged various breaches of the MFDA Rules by Armstrong relating to his dealings with C1.
23. Armstrong was self-represented throughout the MFDA disciplinary hearing process.
24. Armstrong filed a Reply dated February 14, 2011 in which he substantially disputed the allegations set out in the Notice of Hearing.
25. After the MFDA closed its case before the MFDA Hearing Panel, and before Armstrong was to present his case, Armstrong, without the benefit of independent legal advice, entered into an Agreed Statement of Facts drafted by the MFDA and dated August 19, 2011, in which he agreed to substantially the same allegations and facts as had been set out in the Notice of Hearing.

26. The MFDA Hearing Panel rendered a Decision and Order on September 2, 2011 on the basis of the Agreed Statement of Facts, in which the MFDA Hearing Panel ordered that:
 1. The Respondent shall be permanently prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction pursuant to s. 24.1.1(e) of MFDA By-law No. 1, which will be reduced to a 5 year prohibition if client C1 is repaid the sum of \$51,500 by the Respondent on or before December 31, 2013.
 2. The Respondent shall pay a fine in the amount of \$51,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which will be reduced to a fine in the amount of \$10,000 if client C1 is repaid the sum of \$51,500 by the Respondent on or before December 31, 2013.
 3. The Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1.
27. Armstrong paid no amount ordered by the MFDA Hearing Panel and consequently, on January 1, 2014, became permanently prohibited from securities related business in any capacity over which the MFDA has jurisdiction.
28. Armstrong filed a Request for Hearing and Review of the MFDA Hearing Panel's Decision on April 30, 2015.
29. On June 3, 2016, the Financial and Consumer Services Tribunal of New Brunswick granted Armstrong's motion for an extension of time to file his Request for Hearing and Review.
30. Armstrong acknowledges that he engaged in personal financial dealings with C1 by signing a promissory note in the amount of \$62,000 payable by him to C1 in satisfaction of debts owed primarily by AFSI, later known as Gateway, and thereafter failing to pay C1 in accordance with the terms of the promissory note, contrary to MFDA Rules 2.1.4 and 2.1.1.