Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

IN THE MATTER OF

THE MUTUAL FUND DEALER RULES

Re: Nazim Mohammed

Heard: January 19, 2023 by electronic hearing in Toronto, Ontario
Decision January 19, 2023
Reasons for Decision: February 7, 2023

REASONS FOR DECISION

Hearing Panel of the Ontario District Hearing Committee:

Paul M. Moore, K.C.	Chair
Michael-Murray Coulter	Industry Representative
Brigitte Geisler	Industry Representative

Appearances:

Paul Blasiak	)	Senior Enforcement Counsel for the New Self-Regulatory Organization of Canada (Mutual Fund Division)
Rowan LaCasse	)	Counsel for Respondent
Nazim Mohammed	)	Respondent.

I. INTRODUCTION

1. Effective January 1, 2023, the Mutual Fund Dealers Association of Canada ("MFDA") and the Investment Industry Regulatory Organization of Canada consolidated to form the New Self-Regulatory Organization of Canada ("New SRO").

2. On October 19, 2022, the MFDA issued a Notice of Settlement Hearing commencing a disciplinary proceeding in respect of Nazim Mohammed (the "Respondent").

3. Pursuant to Rule 1A(5) of the Mutual Fund Dealer Rules of the New SRO, any enforcement proceeding commenced by the MFDA prior to January 1, 2023, shall proceed in accordance with the by-laws, decisions, directions, policies, regulations, rules, rulings and practice and procedure of the MFDA in effect and applicable to such a proceeding at the time it was commenced.

II. SETTLEMENT AGREEMENT

4. We accepted the settlement agreement dated October 7, 2022 ("Settlement Agreement") between the staff of the New SRO ("Staff") and Nazim Mohammed ("Respondent") at an electronic settlement hearing held in accordance with New SRO rules for an electronic hearing.

5. A copy of the Settlement Agreement is attached to these Reasons as Schedule "1". The agreed facts are set out in Part IV of the Settlement Agreement. Some capitalized terms used in these reasons are defined in the Settlement Agreement.

III. CONTRAVENTIONS

6. The Respondent admits that:

a) In July 2014, the Respondent failed to use due diligence to learn the essential facts relative to clients RM and LM and accurately record the essential facts on Know-Your-Client ("KYC") information Forms, contrary to MFDA Rules 2.2.1 and 2.1.1.

b) In July 2014, the Respondent recommended that clients RM and LM borrow monies from the cash values of their life insurance policies and that LM use the proceeds to purchase a mutual fund without using due diligence to ensure that the recommendation was suitable for the clients, contrary to MFDA Rules 2.2.1 and 2.1.1.

c) In July 2014, the Respondent recommended that client LM purchase a mutual fund that was subject to a 7-year deferred sales charge schedule without using due diligence to ensure that the recommendation was suitable for client LM, contrary to MFDA Rules 2.2.1 and 2.1.1.

IV. SANCTIONS

7. The Settlement Agreement provides that the Respondent will:

a) be suspended from conducting securities related business for a period of 2 years;
b) pay a fine of $15,000; and
c) pay costs of $5,000.

V. CONSIDERATIONS

8. We determined that we had to be satisfied regarding three considerations before we could accept the Settlement Agreement. First, the sanctions had to be within an acceptable range taking into account similar cases. Secondly, the sanctions had to be fair and reasonable (i.e. proportional to the seriousness of the contraventions taking into consideration relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the sanctions should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the sanctions.

VI. MISCONDUCT

9. We determined that the Respondent's conduct was in violation of MFDA Rules 2.2.1 and 2.1.1.

VII. OTHER CONSIDERATIONS

Nature of the Misconduct

10. The Know-Your-Client and suitability obligations are essential to protecting the public and any failure to comply with these obligations is a serious matter.

11. An aggravating factor is that clients RM and LM were vulnerable investors by virtue of their age (63 years old and 61 years old, respectively), employment status (retired), investor knowledge (unsophisticated) and reliance on their investments to meet their short term financial needs in retirement.

12. The contraventions were serious; however, the Respondent's misconduct was limited to two clients who are spouses.

Client Harm

13. After client LM complained to the Member, clients RM and LM cancelled their life insurance policies because they could not afford to pay the interest charges owed on the amounts that they had borrowed from the policies in order to fund the Investment Strategy.

14. Client LM also incurred DSC fees totalling $1,059.39 on the monthly SWP redemptions from the Mutual Fund.

15. The Member paid compensation to clients RM and LM including in respect of the DSC fees incurred by client LM.

Benefits Received by the Respondent

16. The Respondent received approximately $1,018 in compensation from the purchase of the Mutual Fund by client LM. The Member subsequently clawed back this amount from the Respondent.

No Prior Sanctions

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

The Respondent's Recognition of the Seriousness of the Misconduct

18. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and has saved the New SRO the time, resources, and expenses associated with conducting a contested hearing of the allegations.

Deterrence

19. The sanctions will deter the Respondent from engaging in misconduct in the future. The sanctions will also demonstrate to other Approved Persons that a failure to comply with Know-Your-Client and suitability obligations will result in serious consequences. Accordingly, the sanction in this case will deter the Respondent and others from engaging in similar misconduct in the future, improve overall compliance with regulatory requirements by Approved Persons and foster confidence among investors and other stakeholders in the mutual fund industry as a whole.

VIII. CONCLUSIONS

20. The sanctions are within the recommendations of the MFDA Sanction Guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by Staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

21. The costs award is reasonable.

DATED this 7 day of February, 2023.

"Paul M. Moore"
Paul M. Moore, K.C.
Chair

"Michael- Murray Coulter"
Michael-Murray Coulter
Industry Representative

"Brigitte J. Geisler"
Brigitte J. Geisler
Industry Representative

Schedule "1"

Settlement Agreement

File No. 202248

Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

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: Nazim Mohammed

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing (the "Settlement Hearing") to consider whether, pursuant to section 24.4 of MFDA 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, Nazim Mohammed (the "Respondent").

2. Staff and the Respondent, consent and agree to the terms of this Settlement Agreement.

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

II. CONTRAVENTIONS

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

a) In July 2014, the Respondent failed to use due diligence to learn the essential facts relative to clients RM and LM and accurately record the essential facts on Know-Your-Client ("KYC") information Forms, contrary to MFDA Rules 2.2.1[1] and 2.1.1.

b) In July 2014, the Respondent recommended that clients RM and LM borrow monies from the cash values of their life insurance policies and that LM use the proceeds to purchase a mutual fund without using due diligence to ensure that the recommendation was suitable for the clients, contrary to MFDA Rules 2.2.1 and 2.1.1.

c) In July 2014, the Respondent recommended that client LM purchase a mutual fund that was subject to a 7-year deferred sales charge schedule without using due diligence to ensure that the recommendation was suitable for client LM, contrary to MFDA Rules 2.2.1 and 2.1.1.

III. TERMS OF SETTLEMENT

5. Staff and the Respondent agree and consent to the following terms of settlement:

a) the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 2 years from the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to section 24.1.1(c) of MFDA By-law No.1;

b) the Respondent shall pay a fine in the amount of $15,000, pursuant to s. 24.1.1(b) 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;

c) the Respondent shall pay costs in the amount of $5,000, 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) the Respondent shall in the future comply with MFDA Rules 2.2.1 and 2.1.1; and

e) the Respondent will attend by videoconference on the date set for the Settlement Hearing.

[1] On December 31, 2021, MFDA Rule 2.2.1 was amended. As the conduct addressed in this Settlement Agreement pre-dated the amendment to this Rule, all contraventions set out in this Settlement Agreement that make reference to this Rule concern the version of the Rule that was in effect prior to December 31, 2021.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule "A".

IV. AGREED FACTS

Registration History

7. Since 1993, the Respondent has been registered in Ontario as a dealing representative with PFSL Investments Canada Ltd. (the "Member"), a Member of the MFDA.

8. Between 1995 and March 2015, the Member designated the Respondent as a branch manager.

9. At all material times, the Respondent conducted business in the Markham, Ontario area.

Failure to Use Due Diligence to Learn Essential Facts Relative to Clients

10. In 2014 clients RM and LM (spouses) were 63 and 61 years old, respectively, and were retired when they became clients of the Member whose accounts were serviced by the Respondent. Clients RM and LM were unsophisticated investors, and they relied on their investments to meet their short term financial needs in retirement. Based on the foregoing, clients RM and LM were vulnerable clients.

11. On July 21 and 31, 2014, the Respondent met with clients RM and LM, during which, the Respondent facilitated the opening of:

a) a Retirement Income Fund ("RIF") account and a Life Income Fund ("LIF") account at the Member for client RM; and
b) a spousal Registered Retirement Savings Plan ("RRSP") account at the Member for client LM.

12. In respect of these accounts, the Respondent recorded, among other things, the following KYC information on the New Account Application Forms ("NAAFs") of clients RM and LM:

Account No.	Account Owner	Account Type	KYC Information
1	RM	RIF	• Time Horizon: Long-term (more than 7 years) • Risk Tolerance: Medium • Investor Knowledge: Medium
2	RM	LIF	• Time Horizon: Long-term (more than 7 years) • Risk Tolerance: Medium • Investor Knowledge: Medium
3	LM	Spousal RRSP	• Time Horizon: Long-term (more than 7 years) • Risk Tolerance: Medium • Investor Knowledge: Low

13. The Respondent did not use due diligence to learn the essential facts relative to clients RM and LM and accurately record the essential facts on their NAAFs in that he:

a) overstated the risk tolerance of clients RM and LM as "Medium" even though client RM told the Respondent that he was a very conservative investor and client LM told the Respondent that she did not want to purchase any risky investments;

b) overstated the time horizon for client RM's RIF account and client LM's Spousal RRSP account as "Long-term" (more than 7 years) even though clients RM and LM were retired, and the Respondent knew, or ought to have known, that they relied on their investments to meet their short term financial needs in retirement; and

c) overstated client RM's investor knowledge as "Medium" as the Respondent knew, or ought to have known, that client RM was an unsophisticated investor.

Failure to Ensure Suitability of Investment Strategy

14. During the July 21, 2014 meeting between the Respondent and clients RM and LM described above, the Respondent recommended that clients RM and LM borrow monies from the cash values of life insurance policies that they each held, and LM use all of the borrowed monies to purchase a mutual fund (the "Investment Strategy").

15. On or about July 21, 2014, based on the Respondent's recommendation, client RM borrowed $19,000 and client LM borrowed $11,000 from the cash values of their life insurance policies.

16. During the July 31, 2014 meeting described above, based on the Respondent's recommendation, client LM implemented the Investment Strategy in her spousal RRSP account

and purchased a mutual fund (the "Mutual Fund") in the account in the amount of $30,000. The purchase was funded by the monies that clients RM and LM had borrowed from the cash values of their life insurance policies as described above.

17. The Respondent failed to use due diligence to ensure that the Investment Strategy was suitable for clients RM and LM in that he:

a) did not adequately understand or explain to clients RM and LM the risks, features and material assumptions associated with the Investment Strategy;
b) did not ensure that clients RM and LM had a source of savings or income to fund:
    i) the mandatory repayment of the amounts that they had borrowed from their life insurance policies in order to fund the Investment Strategy, and
    ii) the interest payable on the amounts that they had borrowed from their life insurance policies until the amounts borrowed were fully repaid; and
c) failed to use due diligence to ensure that the Investment Strategy was suitable for clients RM and LM having regard to their true KYC information.

18. By virtue of the foregoing, the Respondent failed to use due diligence to ensure that the Investment Strategy that he recommended to clients RM and LM was suitable for them.

Failure to Use Due Diligence to Ensure the Suitability of the Purchase of a Mutual Fund

19. As described above, on July 31, 2014, based on the Respondent's recommendation, client LM purchased the Mutual Fund in her spousal RRSP account in the amount of $30,000. The Mutual Fund was purchased subject to a 7-year deferred sales charge ("DSC") schedule.

20. The Respondent did not ask client LM whether she intended to access the Mutual Fund prior to the expiry of the DSC schedule.

21. In January 2015, the Respondent set up a Systematic Withdrawal Plan ("SWP") in client LM's Spousal RRSP Account, whereby each month $500 (net) was redeemed from the Mutual Fund held by client LM, which was subject to a 7-year DSC schedule as described above.

22. The SWP was set up only 5 months after the purchase of the Mutual Fund, and the DSC schedule had not expired.

23. In May 2019, the final SWP redemption was processed, which reduced the balance in the Spousal RRSP Account to zero.

24. Between January 2015 and May 2019, LM incurred DSC fees totaling $1,059.39 on the monthly SWP redemptions as summarized in the table below:

Year	Gross Total Redemptions	DSC Fees
2015	$7,758.98	$258.90
2016	$7,821.40	$321.40
2017	$7,816.51	$316.51
2018	$7,662.58	$162.58
2019	$2,688.10	$0
Total	**$33,747.49**	**$1,059.39**

25. The Respondent failed to use due diligence to ensure that his recommendation to purchase the Mutual Fund subject to a DSC schedule was suitable for client LM having regard to client LM's age (61 years old), employment status (retired), investor knowledge (low), actual risk tolerance (low), and the fact that she and her spouse (client RM) were relying on their investments to meet their short-term financial needs in retirement.

Subsequent Events

26. In February 2020, client LM complained to the Member.

27. As of April 2020, clients RM and LM had not repaid any of the $30,000 that they borrowed from the cash values of their life insurance policies.

28. To the extent that clients RM and LM incurred interest charges and DSC fees on the Investment Strategy, these charges and fees were partially offset by the increase in market value of the Mutual Fund held by client LM and by the tax deductions available to client RM as the contributing spouse of client LM's spousal RRSP account.

29. The Member paid compensation to clients RM and LM including in respect of the DSC fees incurred by client LM.

30. In or about May 2022, clients RM and LM cancelled their life insurance policies because they could not afford to pay the interest charges owed on the amounts that they had borrowed. There is no outstanding amount owed by the clients in respect of the amounts borrowed.

Additional Factors

31. The Respondent received approximately $1,018 in compensation from the purchase of the Mutual Fund by client LM. The Member subsequently clawed back this amount from the Respondent.

32. On April 13, 2021, the Member issued a disciplinary letter to the Respondent in respect of the conduct described herein.

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

34. The Respondent is currently 77 years old.

35. The Respondent states that he has not recommended the Investment Strategy to any other clients.

36. By entering into the Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a contested hearing of the allegations.

V. ADDITIONAL TERMS OF SETTLEMENT

37. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

38. The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. 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. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

40. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

a) the Settlement Agreement will constitute the entirety of the evidence to be submitted at the settlement hearing, subject to rule 15.3 of the MFDA Rules of Procedure;

b) the Respondent agrees to waive any 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;

c) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. 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 this Settlement Agreement, 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;

d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA By-law No. 1; and

e) 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 the Respondent.

41. 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 this 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.

42. If, for any reason, this Settlement Agreement is not accepted 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 MFDA By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

43. 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. The terms of the Settlement Agreement, including the attached Schedule "A", will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

44. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 7th day of October, 2022.

"Nazim Mohammed"
Nazim Mohammed

"CM"
Witness – Signature

CM
Witness – Print name

"Charles Toth"
Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement

Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

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: Nazim Mohammed

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") provided notice to the public of a Settlement Hearing in respect of Nazim Mohammed (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 MFDA By-law No. 1;

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

a) In July 2014, the Respondent failed to use due diligence to learn the essential facts relative to clients RM and LM and accurately record the essential facts on Know-Your-Client ("KYC") information Forms, contrary to MFDA Rules 2.2.1 and 2.1.1;

b) In July 2014, the Respondent recommended that clients RM and LM borrow monies from the cash values of their life insurance policies and that LM use the proceeds

to purchase a mutual fund without using due diligence to ensure that the recommendation was suitable for the clients, contrary to MFDA Rules 2.2.1 and 2.1.1; and

c) In July 2014, the Respondent recommended that client LM purchase a mutual fund that was subject to a 7-year deferred sales charge schedule without using due diligence to ensure that the recommendation was suitable for client LM, 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. The Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 2 years from the date that this Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(c) of MFDA By-law No.1;

2. The Respondent shall pay a fine in the amount of $15,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by the Hearing Panel;

3. The Respondent shall pay costs in the amount of $5,000, 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 the Hearing Panel;

4. The Respondent shall in the future comply with MFDA Rules 2.2.1 and 2.1.1; 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 901726