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CASE SUMMARY #200802
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MFDA Case Summary

Enforcement

This case summary was prepared by Staff of the MFDA.

Hearing Panel approves Settlement Agreement with Patrick D. Sullivan

Nature of Proceeding

A Hearing Panel of the Pacific Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) has approved a Settlement Agreement between the MFDA and Patrick D. Sullivan (“Sullivan”), a former Approved Person of IQON Financial Inc. (“IQON”), a former Member of the MFDA.

By-Laws, Rules, Policies Violated

The Hearing Panel considered and approved the Settlement Agreement at a hearing held on August 6, 2008 in Vancouver.

In the Settlement Agreement, Sullivan admitted that by recommending or facilitating the sale of shares of All Island Equity Mortgage Investment Corporation (“AIEMIC”) to clients of IQON between May 29, 1998 and Spring 2006 he breached an undertaking he signed on May 29, 1998 not to do so and engaged in securities related business between May 10, 2002 and Spring 2006 that was not properly conducted through the facilities of IQON, contrary to MFDA Rule 1.1.1.

MFDA Rule 1.1.1 states, in part:

Members. No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

(a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:

(i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and

(ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the Bank Act (Canada) and the regulations thereunder and applicable securities legislation.

(b) all revenues, fees or consideration in any form relating to any business engaged in by the Member is paid or credited directly to the Member and is recorded on the books of the Member;

Penalty Under the terms of settlement, Sullivan agreed to pay a fine of \$30,000 and costs of \$5,000.

Summary of Facts Sullivan was registered in British Columbia and Alberta as a mutual fund salesperson with IQON from May 28, 1998 to October 16, 2006. Sullivan has been engaged in the provision of financial services for 37 years.

IQON was a Member of the MFDA from May 10, 2002 until June 1, 2007 when it amalgamated with Assante Financial Management Ltd., also a Member of the MFDA.

On October 24, 2006, Sullivan was registered in British Columbia, Alberta, Ontario and Nova Scotia as a salesperson with Integral Wealth Securities Ltd., a Member of IIROC.

All Island Equity Mortgage Investment Corporation

On or about February 27, 1997, Sullivan, together with a mortgage broker named W.W., established AIEMIC, a mortgage investment corporation registered with the Financial Institutions Commission of British Columbia.

AIEMIC states that it is a privately held mortgage investment company that provides financing for residential and commercial real estate and short-term construction and land development loans. Net profits generated by the company are paid to Class B preferred shareholders (the “Shares” or “Shareholders”) in the form of quarterly dividends.

The Shares were sold in reliance on certain prospectus and registration exemptions available under the *Securities Act* (British Columbia) and related instruments.

Between February 1997 and December 1999, investors purchased the Shares through a share subscription agreement. Commencing January 2000, the Shares were distributed through an offering memorandum.

Under the subscription agreement, Sullivan and W.W. collectively were paid a management fee of “2.1% per annum of the gross value of the mortgage portfolio.” Under the offering memorandum, Sullivan’s corporation, Patrick Sullivan & Associates, and W.W. collectively were paid an annual Financial Services Fee of 2.5%, of AIEMIC’s assets under management.

Securities Related Business Outside the Member

On April 22, 1998, Sullivan entered into an agreement with IQON to become a mutual fund salesperson, at which time he disclosed his interest and involvement in AIEMIC.

On May 28, 1998, following discussions between IQON and the British Columbia Securities Commission concerning Sullivan’s involvement in AIEMIC, the BCSC granted Sullivan registration as a mutual fund salesperson with IQON upon Sullivan agreeing to restrict his involvement in AIEMIC to acting as a director and member of its management committee.

To give effect to this arrangement, Sullivan signed an undertaking on May 29, 1998 (the “Undertaking”) in which he agreed that he would “not participate in or initiate any activities relative to the sale, promotion or solicitation of business or investments in or on behalf of [AIEMIC].”

In or about May 1998, IQON undertook to the BCSC that it would periodically review the files of Patrick Sullivan & Associates to ensure ongoing compliance with the Undertaking.

At all materials times after May 29, 1998, the BCSC and IQON understood that Sullivan would continue in his roles as a director of AIEMIC and a member of AIEMIC’s management committee, the time commitment for which was estimated to be 60 hours per year.

Contrary to the terms of the Undertaking, Sullivan became increasingly involved in the sale of AIEMIC between May 29, 1998 and Spring 2006 due to AIEMIC’s sustained growth.

In August 2003, Sullivan proposed the possibility of reopening the matter of the Undertaking with the BCSC with a view to revising its

terms given that the nature and extent of his involvement in AIEMIC had, over time, become non-compliant with the Undertaking. IQON did not pursue the matter and the terms of the Undertaking remained unchanged.

Despite acknowledging that his activities contravened the Undertaking, Sullivan continued to be involved in the sale of AIEMIC from August 2003 until approximately Spring 2006, contrary to the Undertaking and MFDA Rule 1.1.1.

Between February 1997 and June 2006, AIEMIC represents that it raised a total of \$10,842,750 from investors.

In total, 73 IQON clients whose accounts were being serviced by Sullivan invested approximately \$3.7 million in AIEMIC, in whole or in part as a result of Sullivan's sale, promotion or solicitation of business in or on behalf of AIEMIC. Approximately \$550,000 of which was redeemed from the clients' mutual fund holdings at IQON.

The Shares were never on IQON's list of approved products. None of the aforementioned sales of Shares were carried on for the account of IQON or through its facilities and therefore neither the Shares, nor any transactions in respect of the Shares, were subject to IQON's supervision, including Know-Your-Product and Know-Your-Client suitability reviews.

Reasons for Decision

In its *Reasons for Decision*, the Hearing Panel noted that there had been "considerable negotiation" between Sullivan and MFDA Staff "in order to reach the proposed Settlement" and that "at law the penalties set out in the Settlement Agreement should be considered acceptable provided they are within the reasonable range of appropriateness given the conduct of the Respondent."

For greater detail, see the *Settlement Agreement* dated July 25, 2008 and the *Reasons for Decision* dated August 11, 2008, both of which are posted on the MFDA's website in the "Completed Cases" section under "Enforcement".