

NOVEMBER 27, 2014 ISSUE

FUNDEX REFUSES TO COMPENSATE INVESTORS FOR OFF-BOOK INVESTMENT

The Ombudsman for Banking Services and Investments (OBSI) today announced the refusal of FundEX Investments Inc. (FundEX) to compensate investors in the amount of \$106,123.

FundEX is a national mutual fund dealer that manages approximately \$95 billion in assets. The complainants, Mr. and Mrs. S, had recently sold their home in Alberta and moved to Saskatchewan, investing extra proceeds from the sale of their house. They had limited investment knowledge and experience, and relied heavily, if not entirely, on their FundEX advisor, Mr. H.

Mr. H placed the complainants in an exempt market product called Certified Medallion Executive Business Centre Project (Medallion Mortgage). The Medallion Mortgage investment was a second mortgage on the above-named property that offered 10% annual returns. The investments were made off the books ("off-book") of FundEX, though Mr. and Mrs. S had reason to believe they were properly dealing with a FundEX representative selling a FundEX-approved product. When a court-appointed receiver took over the building on which the second mortgage was placed, the complainants lost all of their investment in Medallion Mortgage.

In May 2013 the Mutual Fund Dealers Association (MFDA) announced it had commenced disciplinary proceedings in respect of Mr. H. In its Reasons and Decision dated August 12, 2014, an MFDA Hearing Panel determined that Mr. H sold exempt market products without FundEX's knowledge and approval, and knowingly concealed the activities. The Panel said that "[t]he seriousness of the conduct is at the very high end of the scale". It issued a permanent prohibition on Mr. H to conduct securities related business with any MFDA Member, a global fine of \$225,000 and an award of costs of \$7,500.

OBSI's investigation report for [Mr. and Mrs. S's](#) complaint is available on OBSI's website. Having considered all the evidence, we find that the complainants reasonably believed that they were properly dealing with a FundEX representative selling a FundEX-approved product that was offered through the firm (further details on the evidence considered is contained in the report). We also find FundEX is responsible for the financial harm incurred by the complainants as a result of the off-book investment they were placed in by their FundEX advisor. It has chosen not to fulfill its responsibilities to them by providing the compensation they are owed based on the facts of the case.

Where a complaint is found to have merit, OBSI makes a recommendation for compensation where it would be fair to do so, taking into account all of the facts and circumstances of the case. A refusal by a participating firm to follow a recommendation means that OBSI must publicize that refusal and the details of the complaint under [Section 27](#) of our Terms of Reference.

OBSI is Canada's national independent dispute resolution service for consumers and small businesses with a complaint they can't resolve with their banking services or investment firm. As a free alternative to the legal system, we work informally and confidentially to find fair outcomes to disputes about banking and investment products and services.

OBSI looks into complaints about most banking and investment matters including: mutual funds; bonds and GICs; stocks, exchange traded funds, income trusts and other securities; investment advice; unauthorized trading; fraud; debit and credit cards; mortgages; loans and credit; fees and

rates; transaction errors; misrepresentation; and accounts sent to collections. Where a complaint has merit, OBSI may recommend compensation up to a maximum of \$350,000.

OBSI has an excellent record of acceptance of recommendations from both firms and complainants: over 99% of the thousands of complaints brought to our office have been successfully resolved.

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