



**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: Judith Rosemary Aitken**

Heard: January 25, 2018 in Toronto, Ontario

Decision: January 25, 2018

Reasons for Decision: February 27, 2018

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC

Edward Jackson

Kenneth P. Mann

Chair

Industry Representative

Industry Representative

Appearances:

Sarah Glickman

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Counsel for the Mutual Fund Dealers  
Association of Canada

Michael Shaffer

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Agent for the Respondent

Judith Rosemary Aitken

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Respondent, in person

## **Settlement Agreement**

1. The Hearing Panel accepted the settlement agreement dated September 12, 2017 (“Settlement Agreement”) between the staff of the MFDA and Judith Rosemary Aitken (“Respondent”). A copy of the Settlement Agreement is attached to these Reasons as Schedule “1”. The agreed facts are set out in section III of the agreement.

## **Contraventions**

2. The Respondent admitted that on November 19, 2015, she cut and pasted a client signature from an account form previously signed by a client onto a new account form, and used the new account form to process a transaction, contrary to MFDA Rule 2.1.1.

## **Agreed penalties**

3. The agreed penalties were: i) a fine of \$4,500; ii) a prohibition on acting as a branch manager for three months; and iii) a costs award of \$2,500.

## **Considerations**

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty 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 agreed penalty.

## **Nature of the Misconduct**

5. Cutting and pasting a client's signature for use on a new account form is conduct contrary to MFDA Rule 2.1.1.

## **Other considerations in determining acceptability of agreed penalties**

6. On June 17, 2016, the Respondent resigned from her Member and is no longer registered in the securities industry.

7. The Respondent was a branch manager when the misconduct occurred.

8. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond any commissions and fees that she would normally be entitled to receive if the transactions had been carried out in the proper manner.

9. There was no evidence of client loss or lack of client authorization.

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

11. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

12. The agreed penalties are appropriate given the seriousness of the misconduct and the fact that the Respondent had the designation of a branch manager at the time. The agreed penalties are within the recommendations of the MFDA penalty 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.

## Costs

13. The costs award is reasonable.

## Conclusion

14. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

**DATED** this 27<sup>th</sup> day of February, 2018.

“Paul M. Moore”

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Paul M. Moore, QC  
Chair

“Edward Jackson”

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Edward Jackson  
Industry Representative

“Kenneth P. Mann”

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Kenneth P. Mann  
Industry Representative

DM 599932



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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Judith Rosemary Aitken ("Respondent"), consent and agree to settlement of this matter by way of this agreement ("Settlement Agreement").

2. Staff conducted an investigation of the Respondent's activities which disclosed 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.

**II. JOINT SETTLEMENT RECOMMENDATION**

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

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

- a) on November 17, 2015, the Respondent cut and pasted a client signature from an account form previously signed by a client onto a new account form, and used the new account form to process a transaction, contrary to MFDA Rule 2.1.1.

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

- a) the Respondent shall pay a fine in the amount of \$4,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall be prohibited from acting as a branch manager for a period of 3 months pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- e) the Respondent will attend in person, on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule “A”.

### **III. AGREED FACTS**

#### **Registration History**

7. Since 1992, the Respondent has been registered as a mutual fund salesperson (now known as a Dealing Representative).

8. Between April 1, 2004 and June 17, 2016, the Respondent was registered in Ontario with TD Investment Services Inc. (“TD”), a Member of the MFDA.

9. Between May 2010 and June 17, 2016, TD designated the Respondent as a branch manager for a branch located in the Burlington, Ontario area.

10. On June 17, 2016, the Respondent resigned from TD and is no longer registered in the securities industry in any capacity.

11. At all material times, the Respondent conducted business in the Burlington, Ontario area.

### **Respondent Cuts and Pastes Copied Client Signature onto Account Form**

12. At all material times, TD's policies and procedures prohibited its Approved Persons, including the Respondent, from engaging in unethical business practices, including by altering a document without client authorization, falsifying account documents, and signing a document for a client.

13. At all material times, client BI was a client of TD whose account was serviced by the Respondent.

14. On November 16, 2015, client BI attended at the branch to transfer monies from her Registered Retirement Savings Plan account to a Retirement Income Fund ("RIF") (the "Transfer") and signed a Registered Plans Internal Transfer form.

15. The Respondent states that due to a TD systems issue, she was unable to process the Transfer that day, which required that client BI sign an additional account form.

16. On November 17, 2015, the Respondent cut client BI's signature from an account form previously signed by client BI, pasted the copy of client BI's signature onto a new account form (the "Account Form"), and used the Account Form to process the Transfer.

17. The Respondent states that client BI was unable to re-attend at the branch to sign the Account Form, so she cut and pasted the client's signature onto the Account Form as described above.

### **TD's Investigation**

18. In May 2016, TD identified the Account Form during the course of a branch audit.

19. As part of its investigation, TD reviewed 160 other client files serviced by the Respondent and identified no other issues and TD personnel also met with client BI who signed a new account form that authorized the Transfer.

20. On June 17, 2016, the Respondent resigned from TD.

### **Additional Factors**

21. There is no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

22. There is no evidence of client loss or lack of authorization.

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

24. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

## **IV. ADDITIONAL TERMS OF SETTLEMENT**

25. 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.

26. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the “Settlement Hearing”). 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](http://www.mfda.ca).

27. 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.

28. 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 respecting the Respondent in this matter;
- b) the Respondent waives any 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;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement. 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 s. 24.1.2 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; 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.

29. 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 By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

30. Staff and the Respondent agree that the terms of the 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.

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

**DATED** this 12<sup>th</sup> day of September, 2017.

“Judith Rosemary Aitken”

\_\_\_\_\_  
Judith Rosemary Aitken

“NA”

\_\_\_\_\_  
Witness – Signature

NA

\_\_\_\_\_  
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. 201794**



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**Re: Judith Rosemary Aitken**

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**ORDER**

(ARISING FROM SETTLEMENT HEARING ON JANUARY 25, 2018)

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of [Respondent] (“Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (“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 on November 17, 2015, the Respondent cut and pasted a client signature from an account form previously signed by a client onto a new account form, and used the new account form to process a transaction, 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 pay a fine in the amount of \$4,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
2. the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
3. the Respondent shall be prohibited from acting as a branch manager for a period of 3 months pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
4. the Respondent shall in the future comply with MFDA Rule 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]