



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: Raymond Joseph Anders

Heard: July 5, 2016, in Regina, Saskatchewan
Reasons for Decision: February 3, 2017

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Richard L. Yaffe
Nada Israeli
Greg Wiebe

Chair
Industry Representative
Industry Representative

Appearances:

David Babin)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Bruce O'Toole)	Counsel for the Respondent (by teleconference)
)	
)	

1. By Notice of Hearing dated January 3, 2016, a Hearing Panel of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened in Regina, Saskatchewan on July 5, 2016 to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept a settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA and Raymond Joseph Anders (the “Respondent”) on July 5, 2016.

2. At the conclusion of the Hearing, the Hearing Panel approved a Settlement Agreement entered into by the parties which, *inter alia*, provided as follows:

TERMS OF SETTLEMENT

The Respondent agrees to the following terms of settlement:

- i) the Respondent shall pay a fine in the amount of \$40,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- ii) the Respondent shall pay costs in the amount of \$5,000, pursuant to Section 24.2 of MFDA By-law No. 1;
- iii) the Respondent shall in the future comply with MFDA Rules 1.1.1 and 2.1.1.

3. The Respondent was not present at the Settlement Hearing. His counsel was present via conference telephone.

AGREED FACTS

4. The facts, as agreed upon by the parties, are as follows:

Registration History

- i) Since October 8, 2014, the Respondent has been registered in Saskatchewan, Alberta and British Columbia as a mutual fund dealing representative with Assante Financial Management Ltd. (“Assante”), a Member of the MFDA.

- ii) From December 16, 2013 to September 15, 2014, the Respondent was registered in Saskatchewan, Alberta and British Columbia as a mutual fund dealing representative with Funds Direct Canada Inc. (“Funds Direct”), a Member of the MFDA.
- iii) From January 13, 2012 to December 16, 2013, the Respondent was registered in Saskatchewan, Alberta and British Columbia as a mutual fund dealing representative with Manulife Securities Investment Services Inc. (“Manulife”), a Member of the MFDA.
- iv) The conduct at issue in this proceeding occurred during the time the Respondent was transferring his registration from Manulife to Funds Direct.
- v) At all material times, the Respondent conducted business in the Regina, Saskatchewan area.

Policies and Procedures Prohibit Pre-Signed or Altered Account Forms

- vi) At all material times, the policies and procedures maintained by Manulife and Funds Direct did not permit Approved Persons to collect and maintain blank or partially complete pre-signed account forms, or to alter account forms after the clients had signed them.

The Respondent Arranges for Clients to Complete Account Forms to Transfer Accounts to a New Member

- vii) On September 10, 2013, the Respondent met with client CS to discuss certain redemptions in two of the client’s accounts and to update client CS’s banking information. The Respondent informed client CS of his upcoming transfer from Manulife to Funds Direct.

- viii) The Respondent also arranged for client CS to sign a Funds Direct New Account Application Form (“NAAF”) which included Know-Your-Client (“KYC”) information, Funds Direct Transfer Authorization for Registered Investment Form, and Funds Direct Transfer Form, in order to move client CS’s accounts from Manulife to Funds Direct. None of the account forms was dated at the time client CS signed them.
- ix) After the Respondent transferred his registration to Funds Direct on December 16, 2013, he populated each of the account forms with a date of January 9, 2014 and used the account forms to transfer client CS’s accounts to Funds Direct.
- x) Between September 10, 2013 and April 24, 2014, the Respondent engaged in the same pattern of conduct with respect to 79 other clients. In each case, while the Respondent was registered with Manulife, he advised the clients that he was intending to transfer to Funds Direct and arranged for the clients to complete an aggregate of approximately 79 Funds Direct NAAFs which included KYC information, and approximately 246 additional Funds Direct account forms, in order to move the clients’ accounts from Manulife to Funds Direct. None of the NAAFs or additional account forms was dated at the time the clients signed them. After the Respondent transferred his registration to Funds Direct, he populated the NAAFs and account forms with various dates in January 2014 and used the account forms to transfer the clients’ accounts to Funds Direct.
- xi) Manulife became aware of the Respondent’s conduct with respect to client CS on January 29, 2014 when the client submitted a complaint with respect to the transfer of his accounts. On March 6, 2014, Manulife notified Funds Direct of the complaint made against the Respondent by client CS. Funds Direct commenced an investigation and detected the Respondent’s conduct with respect to the 79 additional clients described above.

Additional Facts

- xii) The Respondent has not previously been the subject of a MFDA disciplinary proceeding.
- xiii) The Respondent has cooperated with Staff throughout the course of Staff's investigation and these proceedings.
- xiv) There is no evidence that the Respondent's conduct resulted in harm to investors.
- xv) By admitting the facts and contraventions described in paragraphs i) to xi) above, the Respondent has:
 - a) expressed remorse for his actions; and
 - b) saved the MFDA significant time and resources associated with conducting a fully contested hearing on the merits.

CONTRAVENTIONS

5. The Respondent admits that:

- i) between September 10, 2013 and December 16, 2013, he arranged for clients to complete account application forms in order to facilitate the transfer of 80 client accounts to a new Member, prior to being registered with the new Member, thereby engaging in registrable activity and securities related business on behalf of a Member that the Respondent was not registered with, contrary to MFDA Rules 1.1.1 and 2.1.1; and
- ii) between September 10, 2013 and April 24, 2014, he arranged for clients to sign approximately 326 undated account forms which the Respondent subsequently dated himself in order to facilitate the transfer of 80 client accounts to a new Member, thereby failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1.

DISCUSSION

6. The aggravating factors in this case include (i) the nature of the misconduct; and (ii) the indirect benefit received by the Respondent.

- i) The obtaining, and subsequent completion and use, of undated forms is a contravention at the heart of self-regulation in this industry. The gravity of the contraventions is exacerbated by the number of forms obtained by the Respondent and the number of clients involved. The adherence to strict rules and procedures regarding the use of account forms is central to the creation of a self-regulatory system that allows a member to supervise the account. Reliance on information obtained on one date that purports to be as at another date creates a supervisory gap and taints any audit trail.
- ii) As a result of the Respondent's misconduct, he was able to maintain his client base during the transfer, and decrease the likelihood that clients would direct their business elsewhere.

7. The mitigating factors in this case are that the Respondent has no disciplinary record, and there is no evidence of harm or loss to clients. Further, the Respondent has expressed remorse and appears to recognize the seriousness of his misconduct.

8. MFDA hearing panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

- i) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- ii) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- iii) whether the settlement agreement satisfactorily addresses the issues of both specific and general deterrence with respect to the Respondent and the industry, respectively;

- iv) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- v) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- vi) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- vii) whether the settlement agreement will foster confidence in the regulatory process itself.¹

9. The protection of investors is considered by the MFDA to be the primary goal of securities regulation². The goals of securities regulation also include fostering public confidence in the capital markets and the securities industry³.

10. The penalties that are imposed must be sufficient to affirm public confidence in the regulation of the mutual fund industry, and to ensure deterrence.

11. There are a number of general principles that apply when imposing a penalty, which were presented and which the Panel reviewed. It is accepted practice that hearing panels should not interfere lightly in a negotiated settlement if the penalties agreed upon are within a reasonable range of appropriateness.

12. The MFDA Penalty Guidelines are an additional source of guidance regarding the appropriate penalty in a given matter, and are intended to provide a basis upon which discretion may be exercised consistently and fairly in like circumstances. MFDA counsel reviewed with the Panel various MFDA cases and the penalties imposed in those cases, but acknowledged that there are no precedents that are significantly parallel to the particular contraventions and circumstances of this case.

¹ *Sterling Mutuals Inc. (Re)*, Hearing Panel of the Central Regional Council, File No. 200820, Decision and Reasons dated August 21, 2008.

² *Breckenridge (Re)*, Hearing Panel of the Central Regional Council, MFDA File No. 200718, Decision and Reasons dated November 14, 2007.

³ *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.).

13. The Hearing Panel asked Respondent’s counsel if he had anything to add. Respondent’s counsel had no comment other than to acknowledge that the Respondent’s misconduct was of a serious nature, and to confirm that the Settlement Agreement was negotiated by experienced counsel.

14. The Hearing Panel may accept or reject the recommended Settlement Agreement (Section 24.4.3 of MFDA By-law No. 1).

DISPOSITION

15. We are satisfied that the penalty agreed upon is reasonable and that the public’s interest is served by the Settlement Agreement, and we agree unanimously that the Settlement Agreement should be accepted.

DATED this 3rd day of February, 2017.

“Richard L. Yaffe”

Richard L. Yaffe
Chair

“Nada Israeli”

Nada Israeli
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative