



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: Arron John Appleton

Heard: October 23, 2013 in Toronto, Ontario
Reasons for Decision: December 11, 2013

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Terrence Bourne	Industry Representative
Selwyn Kossuth	Industry Representative

Appearances:

Shelly Feld)	Enforcement Counsel, Mutual Fund Dealers
)	Association of Canada
)	
Arron John Appleton)	Respondent – Unrepresented by Counsel
)	
)	

1. By Notice of Settlement Hearing dated October 2, 2013, a hearing panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened to consider whether, pursuant to section 24.4 of By-law No. 1 of the MFDA, the Panel should accept a Settlement Agreement, dated October 2, 2013, entered into by the Staff of the MFDA and the Respondent, Arron John Appleton.

2. At the outset of the proceedings, we considered a joint motion by Staff and the Respondent to move the proceedings *in camera*. We granted that motion. We then considered the provisions of the Settlement Agreement aided by submissions as to the applicable law which should guide this Panel in determining whether to accept or reject the Settlement Agreement.

3. Mr. Appleton, in response to a question from the Panel, confirmed that he did not need the advice of counsel and was content to proceed without counsel at the hearing.

THE ALLEGATIONS

4. The Respondent admits that between March 28, 2006 and May 15, 2012 he obtained, maintained and/or used approximately 24 account forms in 8 client accounts where the account forms were signed by the clients when the account forms were blank or only partially complete, contained photocopies of client signatures, or were altered with correction fluid after the client had signed the account form without any evidence of client approval of the changes to the account form, contrary to MFDA Rule 2.1.1.

5. We heard submissions from Staff and the Respondent concerning the facts of this matter and as to why this particular Settlement Agreement should be accepted by the Panel. After deliberation we unanimously concluded that it was appropriate to accept the Settlement Agreement.

FACTS

6. The Respondent, who has been registered in the mutual fund industry since September

11, 1998, has been registered as a mutual fund salesperson with FundEX Investments Inc., a Member of the MFDA, since July 10, 2001 and has no previous disciplinary history.

7. The Member commenced a routine review of the Respondent's files and discovered pre-signed and photocopied forms. The auditor who conducted the branch review of the Respondent's client files found that the Respondent obtained, maintained and/or used 24 account forms in 8 client accounts. In certain cases the account forms which were signed by the clients were blank or partially complete, with photocopies of client signatures, or altered with correction fluid after the client had signed the form. There was no evidence of client approval. The account forms included order entry forms, account applications and dual occupation disclosure forms. At least 14 of the 24 forms were used to process trades.

8. When questioned about this procedure, the Respondent acknowledged that he sometimes obtained and maintained blank pre-signed or photocopied forms in a file and occasionally used the forms to process a trade or open an account. He clearly stated that he used or maintained such forms to process transactions in accordance with the client's intentions. He stated that his one-man operation required further staff in order to ensure a better balance for the whole client relationship process. He stated that there was no malicious plan. He gave an example of forms being used for a \$30,000 redemption. The Panel was impressed with his candor and his concern about this particular activity and concluded that he was making a real effort to function in the industry with full observance of all industry rules and regulations.

THE MEMBER'S RESPONSE

9. The Member obtained an undertaking from the Respondent to remove all blank forms and discontinue the practice of obtaining and maintaining pre-signed or photocopied forms in client files. The Member sent letters to each of the clients whose accounts were serviced by the Respondent asking for their review of a three-year account statement to identify any inaccuracies. No concerns were communicated to the Member by clients.

10. The Member required the Respondent to review the files of all clients and to remove and

destroy any pre-signed and photocopied forms and to discontinue the previous practice. He was required to obtain new Order Entry Forms and new Account Application Forms signed and dated by clients. He indicated at the hearing that he was sorry for his misconduct.

ACCEPTANCE OF THE SETTLEMENT AGREEMENT

11. As a Panel, we are obviously concerned with this type of conduct, however we believe that the Settlement Agreement fairly addresses those concerns.

12. In determining whether the Settlement Agreement should be accepted, we have considered a number of factors. These include the following:

- i. 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 addresses the issues of both specific and general deterrence.
- iv. Whether the proposed settlement will prevent the type of conduct, which is set out 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 Mutual Fund Dealers Association of Canada.
- vii. Finally, whether the Settlement Agreement will foster confidence in the regulatory process itself.

13. We believe that each and every one of these factors is dealt with in an appropriate fashion by the Settlement Agreement.

SUBMISSIONS AS TO PENALTY

14. Counsel for the MFDA confirmed a number of matters for the Panel: There was no evidence of material harm to any clients; no clients have complained; no clients have lost any funds or money; and, after his initial failure to disclose, the Respondent he made a full and complete admission of his misconduct and cooperated with the MFDA investigators.

15. Enforcement Counsel submitted that there were a number of factors that should be considered as to the acceptance of the Settlement Agreement:

- i. The Respondent clearly admits his contraventions.
- ii. The admissions by the Respondent reduced the cost and time involved in the process and led to certainty as to the procedures to be followed.
- iii. The fine represents a substantial penalty to the Respondent having consideration of his financial income and resources.
- iv. The Respondent has no past disciplinary history with the MFDA.
- v. The Respondent's misconduct has not caused any financial loss to clients.
- vi. The Respondent did not receive any financial benefits.
- vii. The Respondent did not process any trades or changes to client information without the knowledge or authorization of his clients.

16. For all of these reasons, and notwithstanding the conduct of the Respondent, we have concluded that the Settlement Agreement is reasonable. In our considerations we have been mindful of the words found in *Re Milewski*, [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. The Panel made these comments at page 9:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process

in its consideration of specific settlements.

PENALTY

17. The following penalty and costs will be imposed upon the Respondent:

- i. The Respondent will pay a fine in the amount of \$2,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
- ii. The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1.

18. The Panel was advised by Enforcement Counsel that the Respondent had tendered bank drafts in the amount of \$2,500 for payment of each amount.

19. After accepting the Settlement Agreement we rescinded the *in camera* order and signed the order as prepared and presented by Enforcement Counsel. We advised Enforcement Counsel and the Respondent that we would prepare brief reasons for our approval of the Settlement Agreement which are set forth herein.

DATED this 11th day of December, 2013.

“John B. Webber”

The Hon. John B. Webber, Q.C.,
Chair

“Terrence Bourne”

Terrence Bourne,
Industry Representative

“Selwyn Kossuth”

Selwyn Kossuth,
Industry Representative