



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: Howard Peter Arcand

Heard: March 28, 2019 in Toronto, Ontario
Decision: March 28, 2019
Reasons for Decision: May 15, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC
Brigitte J. Geisler
Guenther W. K. Kleberg

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Rafal Szymanski)	Counsel for the Respondent
)	
)	
Howard Peter Arcand)	Respondent, in person
)	
)	

Acceptance of Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated December 12, 2018 (“Settlement Agreement”) between the Staff of the MFDA and Howard Peter Arcand (“Respondent”).
2. A copy of the Settlement Agreement is attached to these reasons as Schedule “1”.

Agreed Facts

3. The agreed facts are set out in Part III of the Settlement Agreement.

Contraventions

4. The violations of the By-laws, Rules, or Policies of the MFDA admitted to by the Respondent are set out in para. 4 of the Settlement Agreement.
5. The Hearing Panel determined that the violations amounted to breaches of the By-laws, Rules, and/or Policies of the MFDA referred to in para. 4 of the Settlement Agreement.

Agreed Penalties

6. The agreed penalties are set out in para. 5 of the Settlement Agreement.

Considerations

7. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalties had to be within the reasonable range of appropriateness taking into account similar cases made by MFDA Hearing Panels in similar cases. Secondly, the agreed penalties had to be fair and reasonable (i.e. proportional to the seriousness of the contraventions and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalties 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.

8. The Hearing Panel took into consideration submissions of Staff, the precedent cases provided by Staff, the MFDA Sanction Guidelines, and the additional factors set out in paras. 17 to 21 of the Settlement Agreement.

Determinations

9. The Hearing Panel concluded that the agreed penalties are consistent with the suggestions in the MFDA Sanction Guidelines and are within the reasonable range of appropriateness taking into account the precedent cases submitted to us by Staff. They are fair and reasonable and will serve as a specific and general deterrent.

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

Costs

11. The costs award is reasonable.

Conclusion

12. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it and signed an order in the form of the order attached as Schedule “A” to the Settlement Agreement.

DATED this 15th day of May, 2019.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Brigitte J. Geisler”

Brigitte J. Geisler
Industry Representative

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative



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SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Howard Peter Arcand (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "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 Mutual Fund Dealers Association of Canada ("MFDA"):

- a) between December 2010 and February 2016, the Respondent altered, and used to process transactions, 32 account forms in respect of 16 clients by altering information on the account forms without having the clients initial the alterations, 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 \$9,000 in certified funds upon acceptance of the Settlement Agreement, 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 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1;
 - c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - d) 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 July 1995, the Respondent has been registered in the mutual fund industry.
8. Since October 2010, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investia Financial Services Inc. (“Investia”), a Member of the MFDA.
9. At all material times, the Respondent conducted business in the Richmond Hill, Ontario area.

Altered Forms

10. Beginning on or about February 9, 2012, Investia’s policies and procedures required client initials on any material changes made to client documents.

11. Between December 2010 and February 2016, the Respondent altered, and used to process transactions, 32 account forms in respect of 16 clients by altering information on the account forms without having the clients initial the alterations.

12. The altered account forms consisted of new account application, order instruction, systematic instruction, trade ticket, and Know-Your-Client (“KYC”) update forms.

Investia’s Investigation

13. On May 18, 2017, Investia identified the altered account forms that are the subject of this Settlement Agreement as a result of a routine branch audit.

14. On June 27, 2017, Investia sent letters to all clients whose accounts the Respondent serviced in order to determine whether the Respondent engaged in unauthorized trading. No concerns were identified.

15. Between September 13, 2017 and March 7, 2018, Investia placed the Respondent under strict supervision. Investia also imposed on the Respondent, a \$500 administrative charge and a \$3 fee for each letter sent to clients. Investia sent a total of 55 letters.

16. On March 7, 2018, Investia issued a warning letter to the Respondent.

Additional Factors

17. The Respondent engaged in the misconduct described above prior to when Investia distributed MFDA Bulletin #0661-E regarding “Signature Falsification” to its Approved Persons.

18. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

19. There is no evidence of client loss or lack of authorization for the underlying transactions.

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

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

IV. ADDITIONAL TERMS OF SETTLEMENT

22. 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.

23. 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.

24. 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.

25. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- e) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- f) 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;

- g) 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;
- h) 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
- i) 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.

26. 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.

27. 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.

28. 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 12th day of December, 2018.

“Howard Peter Arcand”
Howard Peter Arcand

“GM”
Witness – Signature

GM
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. 2018125



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Re: Howard Peter Arcand

ORDER

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

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "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 between December 2010 and February 2016, the Respondent altered, and used to process transactions, 32 account forms in respect of 16 clients by altering information on the account forms without having the clients initial the alterations, 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 \$9,000 in certified funds upon acceptance of the Settlement Agreement, 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 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1;
3. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
4. 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]

DM 675149