



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: Bradley Wayne Archer

Heard: January 31, 2019 in Toronto, Ontario

Decision: January 31, 2019

Reasons for Decision: February 28, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart

Edward V. Jackson

Guenther W. K. Kleberg

Chair

Industry Representative

Industry Representative

Appearances:

Brendan Forbes

) Enforcement Counsel for the Mutual Fund

) Dealers Association of Canada

)

)

Bradley Archer

) Respondent, by telephone

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I. INTRODUCTION

1. Proceedings were commenced by the Mutual Fund Dealers Association of Canada (the “MFDA”) against Bradley Wayne Archer (the “Respondent”), by Notice of Hearing, dated May 3, 2018. The MFDA issued a News Release on November 14, 2018 announcing that, as a result of a settlement agreement entered into between staff of the MFDA (“Staff”) and the Respondent (the “Settlement Agreement”), a settlement hearing would be held on January 31, 2019.

2. At the Settlement Hearing on January 31, 2019 the Hearing Panel considered the Settlement Agreement and, at the conclusion of the hearing, decided to accept it. These are our reasons for that decision.

II. RESPONDENT’S ADMITTED CONTRAVENTIONS

3. The Respondent admitted to the following violations of MFDA Rule 2.1.1:

- a) between December 2002 and June 2016, the Respondent signed the signature of a client on 21 account forms, and submitted the account forms to the Member for processing; and
- b) between 2015 and 2016, the Respondent obtained and possessed 4 pre-signed account forms in respect of 3 clients.

III. AGREED SANCTION

4. Staff and the Respondent agreed that the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member for a period of 9 months commencing from the date of the final Order herein, pursuant to s. 24.1.1.(e) of MFDA By-law No. 1.

5. The Respondent also agreed that in the future he will comply with MFDA Rule 2.1.1.

IV. AGREED FACTS

Registration history

6. Between 2002 and 2016, the Respondent was registered in Ontario as a mutual fund salesperson with State Farm Investors Services (Canada) Co. (“State Farm”), a former Member of the MFDA.

7. On December 16, 2016, State Farm terminated the Respondent as a result of the conduct that is the subject of the Settlement Agreement and the Respondent is no longer registered in the securities industry.

Respondent signed a client’s signature

8. Between December 2002 and June 2016, the Respondent signed the signature client CA, who is the Respondent’s spouse, on 21 account forms, and submitted the account forms to the Member for processing. Those forms consisted of redemption forms, application forms, RESP educational assistance payment forms, a mutual fund purchase disclosure form and a Know-Your-Client form.

Pre-Signed account forms

9. At all material times, State Farm’s policies and procedures prohibited its Approved Persons from using pre-signed account forms.

10. Between 2015 and 2016, the Respondent obtained and possessed 4 pre-signed account forms in respect of 3 clients. Those forms consisted of a transfer authorization form, a pre-authorized chequing/systematic withdrawal plan form, a Know-Your-Client update form and a new account application form.

State Farm’s Investigation

11. On September 29, 2016, during a branch review, State Farm identified the subject pre-signed account forms. State Farm conducted a further review of the Respondent’s client files and identified the subject account forms on which the Respondent signed client CA’s signature.

12. State Farm contacted all clients for whom the Respondent obtained pre-signed account forms or signed the client's signature, who all confirmed they authorized the subject transactions.

Additional Factors

13. The Respondent has been diagnosed with a serious medical condition. He acknowledged that otherwise, it would have been appropriate for him to be subject to a penalty that included a fine and costs due to the subject misconduct.

V. CONSIDERATIONS

14. Section 24.4.3 of MFDA By-Law No. 1 provides that a hearing panel may only accept or reject a settlement agreement in its entirety and it is generally accepted that a hearing panel will not lightly interfere in a settlement agreement negotiated between Staff and a respondent. See, for example, *Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16 at para 37.

15. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily: whether it proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's conduct and circumstances, the MFDA Sanction Guidelines and prior cases; and whether it would serve as a specific and general deterrent.

16. We found that signing a client's signature on 21 account forms and submitting them for processing and obtaining 4 pre-signed account forms constituted a serious breach of MFDA Rule 2.1.1. That rule requires Approved Persons to: deal fairly, honestly and in good faith with clients; observe high standards of ethics in the conduct of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

17. Signing a client's signature on account forms and obtaining pre-signed forms, among other things, adversely affects the integrity of account documents, impedes the ability of the Member to supervise the accounts and may facilitate other misconduct such as unauthorized trading and misappropriation.

18. There were several mitigating factors we considered in reaching our decision, including that:

- a) there was no evidence that the Respondent benefitted from his misconduct, other than usual commissions and fees;
- b) there was no evidence of client losses or lack of authorization for the underlying transactions;
- c) the Respondent has not previously been the subject of MFDA disciplinary proceedings; and
- d) by entering into the Settlement Agreement, the Respondent saved the MFDA the time and expense of a full hearing.

19. We also considered the fact that the Member firm terminated the Respondent's employment as a result of the subject conduct.

20. In previous cases presented to us involving falsification of client signatures a 6 month prohibition was imposed with a relatively small fine. While we were of the view that it would normally be appropriate to impose a fine and costs in relation to the Respondent's misconduct, we were prepared to accept, given the Respondent's medical condition, that the 9 month prohibition was appropriate and should be adequate to deter the Respondent from engaging in such conduct if he re-enters the industry. It should also send a clear message to others about the seriousness of the misconduct.

VI. CONCLUSION

21. We concluded that the agreed sanction was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and personal circumstances, MFDA guidance and precedents, and it would serve as a specific and general deterrent. We decided that in all the circumstances it was appropriate to accept the Settlement Agreement and we did so.

DATED this 28th day of February, 2019.

"Joan Smart"

Joan Smart
Chair

"Edward V. Jackson"

Edward V. Jackson
Industry Representative

"Guenther W. K. Kleberg"

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