



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: Michael Jonathan Bast

Heard: September 27, 2019 in Toronto, Ontario
Decision: September 27, 2019
Reasons for Decision: October 22, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Emily Cole
Matthew Prew
Timothy Pryor

Chair
Industry Representative
Industry Representative

Appearances:

Jacklyn Neborak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Alexandra Grishanova)	Counsel for the Respondent
)	
)	
Michael Jonathan Bast)	Respondent, in person
)	
)	

I. INTRODUCTION

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement between Staff of the MFDA and Michael Jonathon Bast (the “Respondent”).

2. After reviewing the proposed settlement agreement dated September 9, 2019 (“Settlement Agreement”) and the material filed by Staff of the MFDA and hearing the submissions of counsel for Staff, the hearing panel accepted the Settlement Agreement attached as Appendix “A”. Here are the reasons for our decision:

II. CONTRAVENTIONS

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

- a) between September 2014 and September 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 20 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1; and
- b) between January 2015 and July 2016, the Respondent, acting in his capacity as branch manager, reviewed and approved the use of 19 pre-signed account forms, contrary to MFDA Rule 2.1.1 and 2.5.5(f).

III. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine in the amount of \$12,500 upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
 - i) \$1,000, in certified funds, upon acceptance of this Settlement Agreement by the Hearing Panel;
 - ii) \$3,834, on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel;

- iii) \$3,834, on or before the last business day of the sixth month following the acceptance of the Settlement Agreement by the Hearing Panel; and
 - iv) \$3,832, on or before the last business day of the ninth month following the acceptance of the Settlement Agreement by the Hearing Panel.
- 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 be suspended from acting as a branch manager or in any supervisory capacity for a Member of the MFDA for a period of 3 months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.1.1(f) of By-law No.1;
 - d) the Respondent shall successfully complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada prior to acting as a branch manager in the future, pursuant to 24.1.1(f) of MFDA By-law No.1;
 - e) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.5.5(f); and
 - f) the Respondent will attend in person on the date set for the Settlement Hearing.

IV. AGREED FACTS

Registration History

5. Since April 1994, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with PFSL Investments Ltd. (the "Member"), a Member of the MFDA.

6. Since October 2003, the Respondent has been designated as a branch manager with the Member.

7. At all material times, the Respondent conducted business in the Waterloo, Ontario area.

Pre-Signed Account Forms

8. At all material times, the Member's policies and procedures prohibited its Approved Persons from obtaining, holding, or using pre-signed account forms.

9. In January 2016 and December 2016, the Respondent signed the Member's 2015 and 2016 annual attestations where he acknowledged that he would not obtain pre-signed account forms.

10. Between September 2014 and September 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 20 pre-signed account forms in respect of seven clients.

11. The pre-signed account forms consisted of 19 Redemption forms and one Subsequent Contribution form.

Approval of Pre-Signed Account Forms

12. Between September 2014 and September 2017, the Respondent, acting in his capacity as branch manager, reviewed and approved the use of 19 of the pre-signed account forms described above in paragraph 12.

The Member's Investigation

13. On October 12, 2017, during a routine branch audit, the Member identified 16 pre-signed account forms in the client files maintained by the Respondent. The Member subsequently commenced an investigation.

14. On or about November 13, 2017, the Member reviewed the Respondent's redemptions for the previous 12 months and identified the remaining pre-signed account forms that are the subject of this Settlement Agreement.

15. On or about November 29, 2017, the Member also reviewed the redemptions for the previous 12 months submitted by the Approved Persons whom the Respondent supervised. No additional pre-signed account forms were identified.

16. On or about December 6, 2017, as part of its investigation, the Member sent audit letters to the clients serviced by the Respondent for whom pre-signed account forms were identified to determine if the transactions in the clients' accounts were authorized. The Member also sent audit letters to 25 additional clients. No clients reported any concerns.

17. In November and December 2017, the Member conducted meetings in person with the Respondent to review and provide training on the Member's policies and procedures.

18. On May 1, 2018, the Member issued a warning letter to the Respondent for engaging in the conduct that is the subject of this Settlement Agreement and placed the Respondent under close supervision for a period of six months.

19. On or about November 2, 2018, the Member conducted a follow up audit of the Respondent's branch. The Member did not identify any additional concerns with respect to pre-signed account forms.

V. ANALYSIS

Jurisdiction and Role of the Hearing Panel

20. Settlements are to be encouraged. They make a significant contribution to meeting the primary objective of investor protection by providing a practical and efficient way of addressing misconduct in the securities industry. Where the Respondent takes responsibility and admits his misconduct and the parties can agree upon appropriate sanctions, settlements can save time and conserve the regulator's limited resources. Settlements also provide certainty and are likely to result in greater compliance with the sanctions imposed.

British Columbia (Securities Commission v. Seifert, [2006] B.C.J. No 225 at paras. 48-49 (S.C.), aff'd [2007 B.C.J. No 2186 at para. 31 (C.A.)

21. A Hearing Panel is authorized to either accept or reject a settlement agreement. The role of a hearing panel is to determine whether the proposed sanctions agreed to by Staff and the Respondent are within a reasonable range of appropriateness. A Hearing Panel must consider a settlement agreement on its face particularly where, as in this case, the parties are both represented by qualified counsel.

Sterling Mutuals Inc. (Re), 2008 LNCMFDA 16 at para. 37

VI. AGGRAVATING AND MITIGATING FACTORS

The Seriousness of the Misconduct

22. We agree with Staff's submission that the Respondent as a Branch Manager is expected to set an example and should be held to a higher standard. The Respondent pre-signed 19 redemption forms and one subsequent contribution form affecting seven of his client accounts.

23. A further aggravating factor is that under the Member's compliance or control system, the Respondent, as Branch Manager was responsible for reviewing his own accounts. He approved his own dishonest conduct ensuring that his misconduct would not be readily detected.

24. The Respondent continued to engage in this misconduct for a prolonged period of three years.

25. Another aggravating factor is that the Respondent continued to obtain pre-signed forms after the publication of MFDA Bulletin # 0661- E (the "Bulletin"). Eleven of the forms were signed after the publication of the Bulletin. The Bulletin and MFDA Staff Notice MSN-0066 put the Respondent on notice that Staff would seek enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after publication of the Bulletin. Other hearing panels have accepted that such misconduct is now an established aggravating factor.

Owen (Re), 2017 LNCMFDA, 287 at para. 44

26. Mitigating factors include that there is no evidence of client harm or that the Respondent received any financial benefit other than that he would have received had the forms not been pre-signed.

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

28. Staff is satisfied that the Respondent recognizes the seriousness of his misconduct. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his actions and saved the MFDA the time and expense of a contested disciplinary hearing.

VII. CONCLUSION

29. We are satisfied that the penalties imposed in the settlement agreement, particularly the \$12500 fine and the three month prohibition on acting as a branch manager will serve as a specific deterrence to Mr. Bast and a general deterrent to others in the industry, particularly branch managers who may contemplate pre-signing forms and approving pre-signed forms as a branch manager in the future.

30. Staff directed us to previous MFDA decisions which addressed similar misconduct, particularly *Re Riewe*, 2018 LNCMFDA 39, *Re Blake*, 2018 LNCMFDA 270 both of which were post Bulletin cases. Based on a review of these cases, we are satisfied the proposed settlement falls within a reasonable range of appropriateness.

31. We therefore accepted the settlement agreement and made an order reflecting the agreed upon penalties against Mr. Bast.

DATED this 22nd day of October, 2019.

“Emily Cole”

Emily Cole
Chair

“Matthew Prew”

Matthew Prew
Industry Representative

“Timothy Pryor”

Timothy Pryor
Industry Representative

DM 701112



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: Michael Jonathan Bast

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Michael Jonathan Bast (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.

VIII. 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 September 2014 and September 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 20 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1; and
 - b) between January 2015 and July 2016, the Respondent, acting in his capacity as branch manager, reviewed and approved the use of 19 pre-signed account forms, contrary to MFDA Rule 2.1.1 and 2.5.5(f).
5. Staff and the Respondent agree and consent to the following terms of settlement:
- c) the Respondent shall pay a fine in the amount of \$12,500 upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
 - i) \$1,000, in certified funds, upon acceptance of this Settlement Agreement by the Hearing Panel;
 - ii) \$3,834, on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - iii) \$3,834, on or before the last business day of the sixth month following the acceptance of the Settlement Agreement by the Hearing Panel; and
 - iv) \$3,832, on or before the last business day of the ninth month following the acceptance of the Settlement Agreement by the Hearing Panel.
 - d) 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;
 - e) the Respondent shall be suspended from acting as a branch manager or in any supervisory capacity for a Member of the MFDA for a period of 3 months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.1.1(f) of By-law No.1;
 - f) the Respondent shall successfully complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada prior to acting as a branch manager in the future, pursuant to 24.1.1(f) of MFDA By-law No.1;

- g) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.5.5(f); and
- h) 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”.

IX. AGREED FACTS

Registration History

7. Since April 1994, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with PFSL Investments Ltd. (the “Member”), a Member of the MFDA.

8. Since October 2003, the Respondent has been designated as a branch manager with the Member.

9. At all material times, the Respondent conducted business in the Waterloo, Ontario area.

Pre-Signed Account Forms

10. At all material times, the Member’s policies and procedures prohibited its Approved Persons from obtaining, holding, or using pre-signed account forms.

11. In January 2016 and December 2016, the Respondent signed the Member’s 2015 and 2016 annual attestations where he acknowledged that he would not obtain pre-signed account forms.

12. Between September 2014 and September 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 20 pre-signed account forms in respect of 7 clients.

13. The pre-signed account forms consisted of 19 Redemption forms and one Subsequent Contribution form.

Approval of Pre-Signed Account Forms

14. Between September 2014 and September 2017, the Respondent, acting in his capacity as branch manager, reviewed and approved the use of 19 of the pre-signed account forms described above in paragraph 12.

The Member's Investigation

15. On October 12, 2017, during the course of a routine branch audit, the Member identified 16 pre-signed account forms in the client files maintained by the Respondent. The Member subsequently commenced an investigation.

16. On or about November 13, 2017, the Member reviewed all of the Respondent's redemptions for the previous 12 months and identified the remaining pre-signed account forms that are the subject of this Settlement Agreement.

17. On or about November 29, 2017, the Member also reviewed the redemptions for the previous 12 months submitted by the Approved Persons whom the Respondent supervised. No additional pre-signed account forms were identified.

18. On or about December 6, 2017, as part of its investigation, the Member sent audit letters to all of the clients serviced by the Respondent for whom pre-signed account forms were identified in order to determine if the transactions in the clients' accounts were authorized. The Member also sent audit letters to 25 additional clients. No clients reported any concerns.

19. In November and December 2017, the Member conducted meetings in person with the Respondent to review and provide training on the Member's policies and procedures.

20. On May 1, 2018, the Member issued a warning letter to the Respondent for engaging in the conduct that is the subject of this Settlement Agreement, and placed the Respondent under close supervision for a period of six months.

21. On or about November 2, 2018, the Member conducted a follow up audit of the Respondent's branch. The Member did not identify any additional concerns with respect to pre-signed account forms.

Additional Factors

22. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
23. There is no evidence of client loss or lack of authorization for the underlying transactions.
24. There is no evidence of any client complaints with respect to the misconduct described above.
25. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
26. 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.

X. ADDITIONAL TERMS OF SETTLEMENT

27. 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.
28. 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.
29. 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.

30. 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.

31. 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.

32. 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.

33. 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 9th day of September, 2019.

“Michael Jonathan Bast”

Michael Jonathan Bast

“JB”

Witness – Signature

JB

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. 201956



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: Michael Jonathan Bast

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 Michael Jonathan Bast (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 the Respondent:

- a) between September 2014 and September 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 20 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1; and
- b) between January 2015 and July 2016, the Respondent, acting in his capacity as branch manager, reviewed and approved the use of 19 pre-signed account forms, contrary to MFDA Rule 2.1.1 and 2.5.5(f).

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 \$12,500 upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
 - a) \$1,000, in certified funds, upon acceptance of this Settlement Agreement by the Hearing Panel;
 - b) \$3,834, on or before [insert date];
 - c) \$3,834, on or before [insert date]; and
 - d) \$3,832, on or before [insert date].
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 be suspended from acting as a branch manager or in any supervisory capacity for a Member of the MFDA for a period of 3 months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.1.1(f) of By-law No.1;
4. The Respondent shall successfully complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada prior to acting as a branch manager in the future, pursuant to 24.1.1(f) of MFDA By-law No.1;
5. The Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.5.5(f); and
6. 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]