



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: Keith Bates

Heard: October 1 and 8, 2020 by electronic hearing in Toronto, Ontario

Decision: October 8, 2020

Reasons for Decision: December 4, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Emily Cole
Samuel Mah

Chair
Industry Representative

Appearances:

Brendan Forbes)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Maureen Doherty)	Counsel for the Respondent
)	
)	
Keith Bates)	Respondent
)	
)	

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 MFDA (“Staff”) and the Respondent, Keith Bates executed September 4, 2020 (the “Settlement Agreement”).
2. This hearing commenced on October 1, 2020 and was adjourned to October 8, 2020. Mr. Galarneau was unable to attend on October 8, 2020 due to illness. The hearing continued that day with the remaining two panelists in accordance with a decision made by the Chair pursuant to the discretion granted to her under MFDA By-law No. 1, section 19.9.b.
3. After reviewing the Settlement Agreement and the material filed by Staff and hearing the submissions of counsel for Staff, the Hearing Panel accepted the Settlement Agreement attached and signed an order reflecting our approval. These are the reasons for our decision:

II. CONTRAVENTIONS

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of MFDA:
 - a) on December 5, 2017, the Respondent copied the signature page from an account form previously signed by the client and re-used the signature page to complete a new account form, and submitted the new account form to the Member for processing, contrary to MFDA Rule 2.1.1; and
 - b) between May 2014 and October 2018, the Respondent altered and used to process transactions, 96 account forms in respect of approximately 92 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
 - c) between May 2014 and October 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 117 pre-signed account forms in respect of approximately 33 clients, contrary to MFDA Rule 2.1.1; and
 - d) between approximately January 2018 and November 2018, the Respondent held blank bank cheque books of two clients in a client file maintained by the

Respondent and thereby failed to abide by the standard of conduct required of an Approved Person, contrary to MFDA Rule 2.1.1.

III. PROPOSED SANTIONS

5. Staff and the Respondent agreed and consented to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$27,500 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 be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA for a period of three months from the date this Settlement Agreement is accepted, pursuant to s. 24.1.1(e) of MFDA By-law No.1;
- c) 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.
- d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- e) the Respondent will attend in person or by videoconference on the date set for the Settlement Hearing.

IV. AGREED FACTS

Registration History

6. Commencing in 1990, the Respondent was registered in the securities industry.

7. Between 2014 and September 16, 2019, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Equity Investments Inc. (the “Member”), a Member of the MFDA.

8. On September 16, 2019, the Member terminated the Respondent because of the conduct that is the subject of this Settlement Agreement.

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

Re-used client signature page

10. On December 5, 2017, the Respondent copied the signature page from a new account application account form previously signed by the client and re-used the signature page to complete a new account form that he submitted to the Member for processing.

Altered account forms

11. Between May 2014 and October 2018, the Respondent altered and used to process transactions, 96 account forms in respect of approximately 92 clients by altering information on the account forms without having the client initial the alterations.

12. The Respondent altered information on the account forms, including account numbers and redemption amounts.

13. The altered account forms included: order forms, pre-authorized contribution agreement forms, and new account application forms.

Pre-signed account forms

14. Between approximately May 2014 and October 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 117 pre-signed account forms in respect of approximately 33 clients.

15. The pre-signed account forms included order entry forms and Registered Education Savings Plan withdrawal forms.

Prior use of pre-signed account forms

16. In 2017, during its routine review of transactions, the Member identified a pre-signed account form in a client file serviced by the Respondent.

17. On October 17, 2017, the Member issued a warning letter to the Respondent. The Respondent also signed an acknowledgement dated October 17, 2017, stating that he would abide by the guidance set out in MFDA Bulletin 0661-E and MFDA Staff Notice on Signature

Falsification MSN-0066 and the Member's policies and procedures on Signature Falsification and pre-signed account forms.

18. The Respondent obtained, possessed and used, pre-signed account forms that are the subject of this Settlement Agreement in the period after the Member issued the warning letter to him, and after the Respondent signed the acknowledgment described above in paragraph 17.

Holding client cheque books

19. At all material times, the Respondent serviced the accounts of client AW and DW, who resided outside of Canada.

20. In or around 2018, clients AW and DW requested that the Respondent take possession of 3 cheque books pertaining to a bank account of clients AW and DW.

21. The Respondent states that he agreed to take possession of the cheque books and kept them in the file he maintained for clients AW and DW. The Respondent, who was friends with the clients, states that he intended to deliver the cheque books to the clients the next time he visited them outside of Canada.

22. On or around November 25, 2018, during the Member investigation into the Respondent's conduct which is described in paragraph 26, the Member identified the cheque books in the client files maintained by the Respondent.

23. On or around January 16, 2019, the Member sent a letter to clients AW and DW enclosing account statements and asked the clients to confirm if they had any questions about the transactions.

24. There is no allegation that the Respondent accessed AW and/or DW's bank accounts or monies.

25. In or around February 2019, the Member contacted clients AW and DW who confirmed that they had no concerns that the Respondent had acted without their authorization. The Respondent held the cheque books at AW and DW's instructions.

The Member's investigation

26. In or around November 21, 2018, during a MFDA audit, MFDA Staff identified some of the account forms that are the subject of this Settlement Agreement in client files maintained by the Respondent.

27. As a result of the MFDA Staff's findings, the Member commenced the investigation into the Respondent's conduct, reviewed client files maintained by the Respondent, and identified the remaining account forms that are the subject of this Settlement Agreement.

28. On November 21, 2018, the Member placed the Respondent under close supervision.

29. In January and August 2019, the Member sent letters to all clients serviced by the Respondent, which among other things, asked the clients to review account statements that it provided to the clients, and asked the clients to contact the Member if they had any concerns about the transactions processed or if there were any discrepancies. Of the clients who responded, none raised any concerns to the Member.

30. On September 16, 2019, the Member terminated the Respondent because of the conduct that is the subject of this Settlement Agreement.

31. On or about October 15, 2019, the Member called or left messages for the clients who did not respond to the Member's letters to validate client signatures on account forms and the transactions in the clients' accounts. No clients raised any concerns to the Member.

Additional Factors

32. There is no evidence that the Respondent received any financial benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

33. There is no evidence of client loss or lack of authorization for the underlying transactions or any of the allegations at issue.

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

35. 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.

V. ANALYSIS

A. Jurisdiction and Role of the Panel

36. A Hearing Panel is authorized to either accept or reject a settlement agreement.

Section 24.4.3 of MFDA By-law No. 1

37. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing Panel “will tend not to alter a penalty that it considers to be within a reasonable range, considering 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.”

Milewski (Re), [1999] I.D.A.C.D. No. 17.

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

38. Settlements are to be encouraged. They help the MFDA meet its primary objective of investor protection and provide a practical and efficient way of addressing misconduct in the mutual fund industry. Where the Respondent admits his misconduct and takes responsibility for it, it is more likely he will comply with the sanctions imposed. In addition, where the parties can agree upon appropriate sanctions, settlements can save time, conserve the MFDA’s limited resources and provide greater certainty.

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.)

B. The Seriousness of the Misconduct

39. In concluding that the proposed penalty did not clearly fall outside a reasonable range of appropriateness, we considered the seriousness of the misconduct, the aggravating and mitigating factors that are present in this case and the sentencing principles of general and specific deterrence.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

40. The Respondent's misconduct is serious. He admits to four contraventions of the standard of conduct set out in MFDA Rule 2.1.1 including:

- i. copying and reusing a client's signature page to open an account;
- ii. altering 96 account forms and using them to process transactions;
- iii. obtaining 117 pre-signed account forms and in some instances using them to process transaction; and;
- iv. holding blank cheque books of two clients in their accounts.

41. MFDA Rule 2.1.1 is a cardinal rule that governs the standard of conduct expected of a dealing representative. It requires, amongst other things, that:

Each Member and Approved Person of a Member shall: deal fairly, honestly and in good faith with its clients; observe high standards of ethics and conduct in the transaction of business; and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

MFDA Rule 2.1.1(a)-(c).

Photocopying and Using a Client Signature is a Serious Breach of MFDA Rule 2.1.1

42. The Respondent admits he re-used a signature from a New Account Form to open a new account. Re-using a signature page is serious misconduct.

Heide (Re), [2019] Hearing Panel of the Prairie Regional Council, MFDA File No. 2018122, Panel Decision dated April 15, 2019.

Boucher (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201744, Panel Decision dated December 8, 2017 at para. 5.

Obtaining and using Pre-signed Forms is a Serious Breach of MFDA Rule 2.1.1

43. The Respondent admits he obtained, possessed and in some instances, used to process transactions, 117 pre-signed account forms in respect of approximately 33 clients.

44. The pre-signed account forms included:

- a) order entry forms, and
- b) Registered Education Savings Plan withdrawal forms.

45. The Respondent's misconduct is aggravated by the fact that in 2017 just one year before the MFDA audit that revealed the multiple breaches of MFDA rules that are the subject of this proceeding, he received a warning about obtaining and using pre-signed forms. Despite signing an acknowledgment stating that he would comply with MFDA guidance set out in Bulletin 0661-E and MFDA Staff Notice on Signature Falsification MSN-0066 and the Members policies and procedures on Signature Falsification and pre-signed account forms, the Respondent was found to have obtained and used in excess of one 100 forms

46. Hearing panels have repeatedly found that pre-signed forms are a serious breach of MFDA Rule 2.1.1.

Sonne (Re), [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202013, Panel Decision dated May 11, 2020 at para 9.

Mandic (Re), [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202031, Panel Decision dated August 19, 2020 at para 9.

47. The harm lies in the potential for fraud and the adverse effect on the integrity and reliability of client account documents. Use of pre-signed forms destroys the audit trail and prevents the Member from effectively supervising its dealing representative and protecting clients. In *Price* the hearing panel explained:

Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading. As will be discussed more fully infra, the Respondent, in this case, did not have the proper authority to engage in discretionary trading of any nature or kind on behalf of his clients.

At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft, or other forms of harmful conduct towards a client. While there is absolutely no suggestion that the Respondent engaged in any of these activities, the rationale for the prohibition on pre-signed forms becomes clear.

Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the

client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.

Price (Re), [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) date April 18, 2011 at paras 122-124.
Tab 6

Altered Forms is a Serious Breach of MFDA Rule 2.1.1

48. The Respondent admits he altered information on account forms, including account numbers and redemption amounts.

49. The altered forms included:

- a) order forms,
- b) pre-authorized contribution agreement forms, and
- c) new account application forms.

50. Hearing panels have also repeatedly found that altered forms are a serious breach of Rule 2.1.1. for much the same reasons as obtaining pre-signed forms discussed above.

Holding Blank Client Cheque books is a Serious Breach of MFDA Rule 2.1.1

51. For nearly a year, the Respondent held three cheque books belonging to two of his clients in their physical account. Dealing representatives are not authorized to hold client property, particularly blank cheques which provide a blatant opportunity for theft and client harm. We accept Staff's submission that holding blank cheque books that belong to clients is a serious breach of MFDA Rule 2.1.1.

52. We reject the argument that the seriousness of the Respondent's misconduct is mitigated by the fact that the Respondent held the cheque books on his clients' instructions. The Respondent has almost 30 years' experience and ought to have known better. He ought to have advised his clients that he is not authorized to accept their cheque books. Holding blank cheque books in an unsecured physical file raises not only the possibility that the Respondent could have misused them but also that others could gain access to them and cause investor harm.

53. Each of the forms of misconduct that the Respondent engaged in raise the same issue - the potential for fraud, theft, misuse of client funds or other financial harm. While there is no evidence in this case that the Respondent caused investor harm, obtaining pre-signed forms, altering forms, photocopying a signature, and holding client cheque books are not simply convenient ways to cut corners and save time. These actions also thwart the ability of the Member to supervise trading and they destroy the audit trail. Simply put trading documents are not what they purport to be and are unreliable.

C. Aggravating and Mitigating Factors

54. We considered the following aggravating and mitigating factors in reaching our decision that the proposed settlement was reasonable and proportionate.

a) Aggravating Factors

- i) Mr. Bates has been registered in the securities industry for almost 30 years and is an experienced dealing representative.
- ii) The misconduct occurred over a prolonged four-year period from 2014 to October 2018.
- iii) In 2017, Mr. Bates received a warning letter from the Member not to use pre-signed forms. Mr. Bates signed an acknowledgment stating that he would comply with MFDA guidance set out in Bulletin 0661-E and MFDA Staff Notice on Signature Falsification MSN-0066 and the Members policies and procedures on Signature Falsification and pre-signed account forms
- iv) Despite the 2017 warning and corresponding acknowledgement, Mr. Bates persisted in his misconduct and only stopped when faced with this action by the MFDA.

b) Mitigating Factors

- i) Mr. Bates misconduct did not result in any investor harm.
- ii) There were no investor complaints.
- iii) Mr. Bates did not reap any financial benefit from his misconduct.

- iv) There was no evidence that Mr. Bates was acting without his clients' instructions.
- v) Mr. Bates has not been the subject of any prior MFDA proceedings.
- vi) After the misconduct was uncovered by the MFDA, Mr. Bates cooperated fully with the regulator.
- vii) Mr. Bates settled with the MFDA.

VI. COSTS

55. The costs are appropriate and consistent with previous MFDA decisions.

VII. CONCLUSION

56. The Respondent's misconduct is serious. Mr. Bates contravened Rule 2.1.1 in four different ways over a period of four years as set out in the allegations. Where there are multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct.

57. We are satisfied that the proposed sanctions, including the three month prohibition of the Respondent's authority to work in the securities industry, the \$27,500 fine and \$2500 in costs will provide specific deterrence to Mr. Bates from engaging in such misconduct again. These sanctions will also send a message of general deterrence to the others in the industry who may contemplate engaging in similar misconduct in the future that this type of misconduct will not be tolerated.

58. Staff provided five MFDA decisions which addressed similar misconduct. Based on a review of these cases and taking into consideration the factors discussed above, we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

59. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against Mr. Bates.

DATED this 4th day of December, 2020.

“Emily Cole”

Emily Cole
Chair

“Samuel Mah”

Samuel Mah
Industry Representative

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