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 Beausoleil

Heard: March 7, 2019 in Toronto, Ontario
Decision: March 7, 2019
Reasons for Decision: June 10, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W Chenoweth	Chair
Kenneth P. Mann	Industry Representative
Jeff Page	Industry Representative

Appearances:

Jacklyn Neborak	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Justin Papazian	)	Counsel for the Respondent
Michael Beausoleil	)	Respondent, via teleconference

I. BACKGROUND

1. By Notice of Settlement Hearing dated February 14, 2019, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the "MFDA") was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Panel should accept a settlement agreement dated February 11, 2019, ("Settlement Agreement") entered into by the Staff of the MFDA ("Staff") and Michael Beausoleil (the "Respondent"), assisted by his counsel.

2. At the outset of the proceeding, the Panel considered a joint motion by Staff and the Respondent to move the proceedings "in camera". The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether or not to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Panel's reasons for doing so.

II. CONTRAVENTIONS

3. In the Settlement Agreement, the Respondent admits that:

a) Between January 2008 and March 2017, the Respondent, or his assistants for whom he was responsible, obtained, possessed and in some instances, used to process transactions, 29 pre-signed account forms in respect of 14 clients, contrary to MFDA Rule 2.1.1.

III. FACTS

4. In the Settlement Agreement, Staff and the Respondent agreed to the existence of a series of facts, which are set out in Part III of the said Agreement. The Settlement Agreement is attached as Appendix "A" to these Reasons.

5. As set out in the Settlement Agreement, the Respondent, from December 2004 to March 2017, the Respondent was registered in Ontario as a mutual fund salesperson with Quadrus Investment Services Inc. ("Quadrus"), a Member of the MFDA. At all material times, the Respondent conducted business in the LaSalle and Windsor, Ontario areas. On March 30, 2017,

Quadrus terminated the Respondent's registration as a result of the conduct described herein. The Respondent is no longer registered in the securities industry in any capacity.

IV. DISCUSSION

6. The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

a) The facts admitted by the Respondent constitute misconduct in contravention of the By-law, MFDA Rules or policies, or provincial securities legislation; and

b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

7. The Panel accepted that the role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re),* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

> We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "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 <u>not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness</u>." [Emphasis added].
>
> *Sterling Mutuals Inc. (Re),* MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.
>
> *Milewski (Re),* [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

8. The Panel also considered the principle that a Hearing Panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness. Settlements are necessary to assist the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

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) ["*British Columbia (Securities Commission)*"], SBA.

9. Hearing Panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

Bansal (Re), MFDA File No. 201664, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated November 23, 2016.

Balani (Re), MFDA File No. 201402, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 15, 2015.

10. The Panel was advised that the MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years.

MFDA Staff Notice #MSN-0035 dated December 10, 2004

MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017)

MFDA Bulletin #0661-E dated October 2, 2015

11. Additionally, Hearing Panels have found that when an Approved Person processes transactions without client authorizations, he or she violates MFDA Rules 2.3.1 and 2.1.1.

Stolarz (Re), MFDA File No. 201642, Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated November 4, 2016.

Jean (Re), MFDA File No. 2016114, Hearing Panel of the Central Regional Council, Decision and Reasons dated June 15, 2017.

12. The Panel considered in detail the agreed facts set out in the Settlement Agreement, and having done so, concluded that both allegations admitted by the Respondent had been proven and constitute misconduct in contravention of the By-laws, MFDA Rules or policies, or provincial securities legislation.

13. The Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Panel considered the submissions of Staff and the Respondent's counsel, the MFDA Penalty Guidelines and the substantial case law to which it was referred.

14. In doing so, the Panel was mindful that the primary goal of securities regulation is the protection of the investor. The Panel was further mindful that in addition to protection of the public, the goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.

> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557.
>
> *Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

15. The Panel also accepted the submissions of Staff that the following factors are frequently considered by Hearing Panels when determining whether a penalty is appropriate:

a) The seriousness of the allegations proved against the Respondent;
b) The Respondent's past conduct, including prior sanctions;
c) The Respondent's experience and level of activity in the capital markets;
d) Whether the Respondent recognizes the seriousness of the improper activity;
e) The harm suffered by investors as a result of the Respondent's activity;
f) The benefits received by the Respondent as a result of the improper activity;
g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
j) The need to alert others to the consequences of inappropriate activity to those who are permitted to participate in the capital markets; and
k) Previous decisions made in similar circumstances.

> *Breckenridge*, supra.

16. In this respect, the Panel was mindful that:

a) The nature of the contraventions that had been admitted by the Respondent were serious and warranted significant penalties. In particular, the use of pre-signed account forms is a serious breach of MFDA Rule 2.1.1.

Balani (Re), supra

b) The Respondent did not have a history of previous contraventions or prior sanctions.

c) In the MFDA Bulletin #0661-E dated October 2, 2015 (the "Bulletin"), Staff reminded Members and Approved Persons that "Signature Falsification" is not permissible under MFDA Rules. This term includes conduct like pre-signed account forms, altered account forms and the falsification of a client signature. In the Bulletin, and in the MFDA Staff Notice #MSN-0066 updated on January 26, 2017, Staff advised Members and Approved Persons that Staff will be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

MFDA Staff Notice MSN-0066, Signature Falsification, dated October 31, 2007 (Updated January 26, 2017), SBA.

MFDA Bulletin #0661-E, Signature Falsification, dated October 2, 2015, SBA.

d) The Panel noted that in this matter, 6 of the account forms were obtained after the MFDA issued the Bulletin. Staff considers this to be an aggravating factor, which has been discussed by hearing panels in several MFDA decisions.

Techer (Re), [2016] Hearing Panel of the Prairie Regional Council, MFDA File No. 201662, Panel Decision dated December 5, 2016, at para. 44, SBA.

Ackerman (Re), Hearing Panel of the Prairie Regional Council, MFDA File No. 201734, Panel Decision dated September 13, 2017, at para. 29, SBA.

e) There was no evidence of client loss or lack of authorization.

f) There was no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, beyond any commissions and

fees that he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

g) It was clear that the Respondent recognized the seriousness of his misconduct by entering into the Settlement Agreement, the Respondent has accepted responsibility for his actions and avoided the time and expense of a full disciplinary hearing.

h) The Panel was satisfied that the goal of both general and specific deterrents had been satisfied.

V. RESULT

17. For all the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties were imposed upon the Respondent:

a) The Respondent shall pay a fine in the amount of $11,500 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 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.

d) 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*.

e) The time for the Corporation to give notice of this Settlement Hearing pursuant to Rule 15.2(1) of the MFDA *Rules of Procedure* is abridged to eight days pursuant to Rule 2.2(1)(a) of the MFDA *Rules of Procedure*.

DATED this 10th day of June, 2019

"Frederick W. Chenoweth"
Frederick W. Chenoweth
Chair

"Kenneth P. Mann"
Kenneth P. Mann
Industry Representative

"Jeff Page"
Jeff Page
Industry Representative

DM 681745

Appendix "A"

Settlement Agreement

File No. 201913

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 Beausoleil

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Michael Beausoleil (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 January 2008 and March 2017, the Respondent, or his assistants for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 29 pre-signed account forms in respect of 14 clients, 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 $11,500 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 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 by teleconference, 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. From December 2004 to March 2017, the Respondent was registered in Ontario, as a mutual fund salesperson (now known as a dealing representative), with Quadrus Investment Services Inc. ("Quadrus"), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Lasalle and Windsor, Ontario areas.

9. On March 30, 2017, Quadrus terminated the Respondent's registration as a result of the conduct described herein.

10. The Respondent is no longer registered in the securities industry in any capacity.

Pre-Signed Account Forms

11. At all material times, Quadrus' policies and procedures prohibited its Approved Persons from using pre-signed account forms.

12. Between January 2008 and March 2017, the Respondent, or his assistants for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 29 pre-signed account forms in respect of 14 clients.

13. The pre-signed forms consisted of: Mutual Fund Subsequent Investment, Pre-Authorized Chequing, Switch, Conversion, Know Your Client and Systematic Transfer and Exchange Program forms.

Quadras' Investigation

14. On or about March 22, 2017, during the course of a sub-branch review, and in the subsequent follow up investigation, Quadrus identified the account forms that are the subject of this Settlement Agreement.

15. On March 23, 2017, Quadrus issued a disciplinary letter to the Respondent and imposed a one-year period of close supervision on the Respondent. The Respondent was also required to confirm that he would abide by Quadrus' policies and procedures, and complete internal training.

16. On or about March 27, 2017, Quadrus sent audit letters to all of the clients serviced by the Respondent in order to inform the clients of the Respondent's activities and confirm that the clients had authorized the transactions in their accounts.

17. On March 30, 2017, Quadrus terminated the Respondent's registration.

Additional Factors

18. There is no evidence that the Respondent received any 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.

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 on 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:

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.

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 11th day of February, 2019.

"Michael Beausoleil"
Michael Beausoleil

"PB"
Witness – Signature

PB
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. 201913

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 Beausoleil

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 Beausoleil (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 January 2008 and March 2017, the Respondent, or his assistants for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 29 pre-signed account forms in respect of 14 clients, 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 $11,500 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 666462