



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: Edison Gerald Benoit

Heard: November 30, 2017 in Toronto, Ontario

Decision: November 30, 2017

Reasons for Decision: December 8, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

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

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Morgan Westgate)	Counsel for the Respondent
)	
Edison Gerald Benoit)	Respondent, in person
)	

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated April 11, 2017 (“Settlement Agreement”) between the staff of the MFDA and Edison Gerald Benoit (“Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in section III of the agreement.

Contraventions

2. The Respondent admitted that:

- a) on or about August 24, 2015, in response to a request from the Member that he obtain a new account form signed by a client to confirm that the client was aware of the fees and costs associated with a transaction, he photocopied a previously collected account form, altered the fees and costs disclosure section of the account form, and re-submitted it to the Member to process the transaction, contrary to MFDA Rule 2.1.1 ;
- b) on or about February 24, 2015, he altered an account form by altering information on the form without having the client initial the alteration, contrary to MFDA Rule 2.1.1; and
- c) in or around July 2015, he obtained and possessed four (4) pre-signed account forms in respect of one (1) client, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were: i) a fine of \$10,000; and ii) a costs award of \$2,500.

Considerations

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty 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.

Nature of the Misconduct

5. Obtaining, possessing and using to process transactions pre-signed account forms and altering documents and re-submitting them to the Member is conduct contrary to MFDA Rule 2.1.1.

Other considerations in determining acceptability of agreed penalties

6. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond any commissions and fees that he would normally be entitled to receive if the transactions had been carried out in the proper manner.

7. There was no evidence of client loss or lack of authorization.

8. The Respondent has not previously been subject to MFDA disciplinary proceedings.

9. 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.

10. The agreed penalties are within the recommendations of the MFDA penalty guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

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.

DATED this 8th day of December, 2017.

“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

DM 587447

Schedule “1”

Settlement Agreement

File No. 201742



Mutual Fund Dealers Association of Canada
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**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Edison Gerald Benoit

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Edison Gerald Benoit (“Respondent”), consent and agree to settlement of this matter by way of this agreement (“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 MFDA:

- a) on or about August 24, 2015, in response to a request from the Member that the Respondent obtain a new account form signed by a client to confirm that the client was aware of the fees and costs associated with a transaction, the Respondent photocopied a previously collected account form, altered the fees and costs disclosure section of the account form, and re-submitted it to the Member to process the transaction, contrary to MFDA Rule 2.1.1;
- b) on or about February 24, 2015, the Respondent altered an account form by altering information on the form without having the client initial the alteration, contrary to MFDA Rule 2.1.1; and
- c) in or around July 2015, the Respondent obtained and possessed 4 pre-signed account forms in respect of 1 client, 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 \$10,000 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 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

7. Since 1998, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative).

8. Since 2012, the Respondent has been registered with Desjardins Financial Security Investment Inc. (“Desjardins”), a Member of the MFDA.

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

AP Altered and Re-used an Account Form to Process Transaction

10. At all material times, client IS was a client of Desjardins whose account was serviced by the Respondent.

11. On or about July 9, 2015, the Respondent submitted a letter of direction in respect of client IS’s account to Desjardins for processing that had been signed by client IS in order to process an internal transfer of funds (the “July 9 LOD”).

12. During its review of the July 9 LOD, Desjardins identified that the Respondent had failed to complete a section of the form that contained fee disclosure information. Desjardins asked the Respondent to properly complete a new letter of direction, including the fee disclosure information, and have client IS sign the new form.

13. In response to Desjardins’ request, the Respondent did not meet with client IS to complete the new form, but instead, photocopied the signature page of the July 9 LOD and completed the fee disclosure information section on this page prior to re-using the signature page by submitting it to Desjardins on or about August 24, 2015.

Altered Account Form

14. On or about February 24, 2015, the Respondent altered information on a letter of direction without having the client initial the alteration.

Pre-Signed Account Forms

15. At all material times, Desjardins' policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining, possessing, and using pre-signed account forms.

16. In or around July 2015, the Respondent obtained and possessed 4 pre-signed account forms in respect of 1 client.

17. The pre-signed account forms consisted of letters of direction and know-your-client forms.

Desjardins' Investigation

18. On or about August 24, 2015, in response to its supervisory inquiry in respect of the July 9 LOD, Desjardins identified that the Respondent had re-used client IS's signature on the letter of direction the Respondent submitted on or about August 24, 2015.

19. As part of its investigation, Desjardins reviewed all client files serviced by the Respondent and identified the account forms that are the subject of this Settlement Agreement.

20. On November 11, 2015, Desjardins sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in unauthorized trading or had clients signed pre-signed account forms. Desjardins identified no further concerns arising from client responses to these letters and no evidence of lack of authorization.

21. On January 25, 2016, Desjardins issued a warning letter to the Respondent in respect of the conduct that is the subject of this Settlement Agreement.

22. Desjardins also met with client IS, who confirmed that he authorized the transaction processed using the July 9 LOD and that the Respondent had disclosed all the required fee information at the time he signed the July 9 LOD.

Additional Factors

23. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above other than the commissions or fees he would ordinarily be entitled to had the transactions been completed in the proper manner.

24. There is no evidence of client loss or lack of authorization.

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.

IV. 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 facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and 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 11th day of April, 2017.

“Edison Gerald Benoit”

Edison Gerald Benoit

“BB”

Witness – Signature

BB

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. 201742



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Edison Gerald Benoit

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Edison Gerald Benoit (“Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (“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:

- a) on or about August 24, 2015, in response to a request from the Member that the Respondent obtain a new account form signed by a client to confirm that the client was aware of the fees and costs associated with a transaction, the Respondent photocopied a previously collected account form, altered the fees and costs disclosure

section of the account form, and re-submitted it to the Member to process the transaction, contrary to MFDA Rule 2.1.1;

- b) on or about February, 2015, the Respondent altered an 1 account form by altering information on the form without having the client initial the alteration, contrary to MFDA Rule 2.1.1; and
- c) in or around July 2015, the Respondent obtained and possessed 4 pre-signed account forms in respect of 1 client, 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 \$10,000 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 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]