



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: Robert Allan Berget

Heard: May 1, 2020 in Vancouver, British Columbia

Decision: May 1, 2020

Reasons for Decision: May 11, 2020

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Michael Carroll, QC
Darlene Barker
Susan Monk

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Maureen Doherty)	Counsel for the Respondent, by videoconference
)	
)	
Robert Berget)	Respondent, by videoconference
)	
)	

I. INTRODUCTION

1. On May 1, 2020, the Hearing Panel accepted the settlement agreement dated January 6, 2020 (the “Settlement Agreement”) between the staff of the Mutual Fund Dealers Association of Canada (the “MFDA”) and Robert Allan Berget (the “Respondent”). A copy of the Settlement Agreement is attached as Schedule “1” to these Reasons for Decision. The agreed facts are as set out in Section III of the Settlement Agreement.

II. CONTRAVENTIONS

2. The Respondent admitted that:

- a) between September 17, 2013 and May 15, 2017, he or his assistant for whom he was responsible, altered 12 account forms in respect of 12 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between February 25, 2013 and February 22, 2018, he or his assistant for whom he was responsible, obtained, possessed and in some cases used to process transactions, 17 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1.

III. AGREED PENALTIES

3. The Respondent has agreed to pay a fine of \$ 11,500 and costs of \$2,500.

IV. CONSIDERATIONS

4. Pursuant to s. 24.4.3 of MFDA By-law No. 1, the Hearing Panel must either accept the Settlement Agreement or reject it.

5. In making a determination whether to accept or reject the Settlement Agreement, the Hearing Panel must take into account a number of factors including:

- a) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;

- b) Whether the Settlement Agreement is reasonable and proportionate having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- c) Whether it will prevent the type of conduct described in the Settlement Agreement from occurring again; and
- d) Whether it will foster confidence in the integrity of the Canadian capital markets, the MFDA, and the regulatory process itself.

V. APPROPRIATENESS OF THE PROPOSED PENALTY

6. Hearing Panels frequently consider a number of factors when determining whether a penalty is appropriate including:

- a) The seriousness of the allegations admitted;
- b) The Respondent's past conduct and experience;
- c) The harm suffered by investors and the benefits received by the Respondent as a result of the improper activities;
- d) The need to deter those involved in the particular case and others who participate in the Capital Markets from engaging in similar activities; and
- e) Previous decisions made in similar circumstances.

VI. ENHANCED PENALTY

7. In MFDA Bulletin #0661-E dated October 2, 2015, Staff reminded Members and Approved Persons that "Signature Falsification" was not permitted under the MFDA Rules. This term includes obtaining pre-signed account forms, altered forms, and the falsification of a client signature. In the Bulletin Members and Approved Persons were advised that Staff would be seeking enhanced penalties for conduct that occurred after the publication of the Bulletin.

VII. RESPONDENT IS RESPONSIBLE FOR ASSISTANT

8. Whether or not his assistants were responsible for obtaining and using the deficient forms as asserted by the Respondent, he is ultimately responsible for the misconduct.

9. In several cases Hearing Panels have found that the Approved Person was responsible for the actions of his assistant who had obtained and used pre-signed account forms.

Barack (Re), MFDA File No. 201635, Hearing Panel of the Central Regional Council dated September 9, 2016.

Boucher (Re), MFDA File No. 201744, Hearing Panel of the Central Regional Council dated December 8, 2017.

VIII. APPLICATION OF ABOVE NOTED FACTORS TO THE PRESENT CASE

10. By obtaining, possessing, and using pre-signed account forms the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1 which must be regarded as serious.

11. Similarly by altering information on account forms without having the client initial the alteration is a violation of the standard of conduct as set out in Rule 2.1.1 and should similarly be regarded as serious.

12. The Respondent was registered as a mutual fund dealing representative since January 2002 who ought to have known the MFDA's and Member's compliance requirements.

IX. MITIGATING FACTORS

13. The Respondent has not been previously disciplined by the MFDA. By entering into the Settlement Agreement he has saved the time, resources, and expenses associated with conducting a full hearing of this matter. Finally there is no evidence of client harm or that the Respondent received any financial or other benefit through his conduct. There were no client complaints.

X. PREVIOUS DECISIONS

14. Council referred the Hearing Panel to previous decisions in similar cases:

- *Beausoleil (Re)*, MFDA File No. 201913, Hearing Panel of the Central Regional Council dated June 10, 2019
- *Ho (Re)*, MFDA File No. 201862, Hearing Panel of the Central Regional Council dated December 7, 2018
- *Boassaly (Re)*, MFDA File No. 201918, Hearing Panel of the Central Regional Council dated May 15, 2019

XI. CONCLUSION

15. The Hearing Panel is satisfied that the penalties proposed in the Settlement Agreement are within the parameters of the cases cited above, will advance the public interest and enhance investor protection and ensure high standards of conduct in the mutual fund industry. We therefore approve the terms of Settlement Agreement.

DATED this 11th day of May, 2020.

“Michael Carroll”

Michael Carroll, QC
Chair

“Darlene Barker”

Darlene Barker
Industry Representative

“Susan Monk”

Susan Monk
Industry Representative



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**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: Robert Allan Berget

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Robert Allan Berget (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 September 17, 2013 and May 15, 2017, the Respondent, or his assistant for whom he was responsible, altered 12 account forms in respect of 12 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
 - b) between February 25, 2013 and February 22, 2018, the Respondent, or his assistant for whom he was responsible, obtained, possessed and in some instances used to process transactions, 17 pre-signed account forms in respect of 13 clients, contrary 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 pursuant to section 24.1.1(b) of By-law No. 1, upon acceptance of this Settlement Agreement;
 - b) the Respondent shall pay costs in the amount of \$2,500 in certified funds pursuant to section 24.2 of By-law No. 1, upon acceptance of this Settlement Agreement;
 - c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - d) the Respondent will attend in person at 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. Since January 11, 2002, the Respondent was registered in British Columbia as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. (the “Member”), a Member of the MFDA.
8. At all material times, the Respondent carried on business in the Kelowna, British Columbia area.

Altered Forms

9. At all material times, the Member's policies and procedures prohibited its Approved Persons from altering account forms without the client initialing the document to show the alteration was approved.
10. Between September 17, 2013 and May 15, 2017, the Respondent, or his assistant for whom he was responsible, altered 12 account forms in respect of 12 clients by altering information on the account forms without having the clients initial the alterations.
11. The altered account forms included Know Your Client ("KYC") Update Forms, Pre-Authorized Withdrawal Forms, Order Tickets and Transfer Authorization Forms.
12. The alterations made to the account forms included alterations to fund codes, KYC information, client information and withdrawal amounts.

Pre-Signed Forms

13. At all material times, the Member's policies and procedures prohibited its Approved Persons from using pre-signed account forms.
14. Between February 25, 2013 and February 22, 2018, the Respondent, or his assistant for whom he was responsible, obtained, possessed and in some instances used to process transactions, 17 pre-signed account forms in respect of 13 clients.
15. The pre-signed account forms included, New Account Opening Forms, Order Tickets, Pre-Authorized Withdrawal Forms, Direction for Payment from Registered Education Savings Plan Forms and Transfer Authorization Forms.

Member's Response

16. On July 20, 2018, the Member conducted a branch audit and identified a total of 20 pre-signed and altered account forms in the Respondent's client files that are the subject of this Settlement Agreement.

17. Commencing September 4, 2018, the Member placed the Respondent on close supervision as a result of identifying the forms described herein. The Respondent remains under close supervision.

18. On September 10 and 11, 2018, the Member conducted a review of all of the client files maintained by the Respondent and identified the remaining 9 pre-signed and altered forms that are the subject of this Settlement Agreement.

19. On October 26, 2018, the Member sent letters to all of the clients whose accounts the Respondent serviced along with the clients' portfolio statements. The Member asked the clients to review the transactions to confirm they were authorized and advise whether they had any concerns. No clients responded with any concerns to the Member.

20. On November 26, 2018, the Member issued a warning letter to the Respondent.

Additional Factors

21. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

22. There is no evidence of client loss in this matter or that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner.

23. There have been no client complaints in relation to the conduct described in this Settlement Agreement, and no evidence of unauthorized trading by the Respondent.

24. The Respondent states that he has since corrected his practices going forward and no longer obtains re-used, pre-signed or altered account forms.

25. The Respondent states that in some cases, the account forms as described above were obtained and used by his assistants. The Respondent acknowledges that he is ultimately responsible for the conduct that is the subject of this Settlement Agreement.

26. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to this settlement, has avoided the necessity of a full hearing on the merits.

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 6th day of January, 2020.

“Robert Allan Berget”

Robert Allan Berget

“ME”

Witness – Signature

ME

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. 202010



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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: Robert Allan Berget

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 Robert Allan Berget (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,

- a) between September 17, 2013 and May 15, 2017, the Respondent, or his assistant for whom he was responsible, altered 12 account forms in respect of 12 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between February 25, 2013 and February 22, 2018, the Respondent, or his assistant for whom he was responsible, obtained, possessed and in some instances used to

process transactions, 17 pre-signed account forms in respect of 13 clients, contrary 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 pursuant to section 24.1.1(b) of By-law No. 1, upon acceptance of this Settlement Agreement;
- 2. The Respondent shall pay costs in the amount of \$2,500 in certified funds pursuant to section 24.2 of By-law No. 1, upon acceptance of this Settlement Agreement;
- 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]