



**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: Ronald Lyle Bestard**

Heard: December 9, 2011 in Toronto, Ontario  
Reasons for Decision: December 14, 2011

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Terrance A. Sweeney  
Linda J. Anderson  
Guenther Kleberg

Chair  
Industry Representative  
Industry Representative

Appearances:

Lyla Simon	)	Counsel, Mutual Fund Dealers Association of
	)	Canada ("MFDA")
John Gallimore	)	MFDA Investigator
John Fabello	)	Counsel for the Respondent
Ronald Lyle Bestard	)	Respondent

1. We were constituted a Hearing Panel of the Central Regional Council of the MFDA to consider a Settlement Agreement<sup>1</sup> between the MFDA and the Respondent by which the Respondent agreed to pay a fine of \$5,000.00 and costs of \$1,000.00. At the end of the hearing we signed an Order to that effect with reasons to follow:

The Respondent admits that between 2008 and 2010 he:

(a) falsified, or permitted to be falsified, client signatures on 15 account opening documents, and signed redemption or purchase forms for 7 clients, contrary to MFDA Rule 2.1.1(a); and

(b) obtained and maintained blank pre-signed forms for 4 clients, and ‘whited out’ details on old redemption forms and re-used the forms for 5 clients, contrary to MFDA Rule 2.1.1(a).

2. At the opening of the hearing, Counsel for MFDA pointed out that only 7 days notice of the hearing had been given whereas under the Rules of Procedure<sup>2</sup> of the MFDA 10 days was required. She asked for an Order abridging the time which, under the Rules of Procedure,<sup>3</sup> we had jurisdiction to grant and we so ordered.

3. We marked the Notice of Settlement Agreement as an exhibit<sup>4</sup> and moved into an *in camera* session.

4. During the *in camera* session, Counsel for MFDA in her written and oral submissions fairly outlined the reasons why, in the circumstances of this case, the settlement was reasonable and in the public interest. She noted the Penalty Guidelines<sup>5</sup> issued by the MFDA and relevant case law in support of her position that the Settlement Agreement should be accepted by the Hearing Panel.

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<sup>1</sup> Exhibit 2

<sup>2</sup> MFDA Rules of Procedure, July 16, 2010; Rule 15.2(1)

<sup>3</sup> *Ibid*, Rules 1.3(1), 1.5 and 2.2(1)

<sup>4</sup> Exhibit 1

<sup>5</sup> MFDA Penalty Guidelines, September 20, 2006

5. Counsel for the Respondent did not address the Hearing Panel.

## **ANALYSIS AND DECISION**

6. The Hearing Panel will not interfere with a negotiated Settlement Agreement provided that the penalty is within a reasonable range of appropriateness in the context of the facts of the case.

7. The Hearing Panel is well aware of the principles to be used in fixing penalties in a case such as this one. The Hearing Panel must strive to balance fairness and specific deterrence to the Respondent and general deterrence to others, who might be inclined to engage in such behaviour, with the need to foster confidence in the public in the mutual fund industry.

8. Jurisprudence is helpful in establishing general principles but each case ultimately turns on its own facts.

9. In this case the Hearing Panel notes the following mitigating factors which weighed heavily in its decision:

(a) The Respondent's commendable cooperation with MFDA Staff in its investigation. Ms. Simon said that the Respondent "went above and beyond" the actions of typical Respondents in cases of this kind.

(b) The Respondent's conduct only concerned a small number of his clients. Moreover, his aberrant behaviour occurred at a time when he was experiencing severe health issues.

(c) The Respondent had no prior disciplinary problems.

(d) There were no client complaints, no damage to clients' assets as a result of his conduct, and the Respondent derived no benefit from his actions.

(e) The Respondent had been subject to strict supervision for over a year without incident.

10. We have carefully considered the facts and circumstances of this case, the relevant case law, and the Penalty Guidelines<sup>6</sup> and unanimously accept the Settlement Agreement.

**DATED** this 14<sup>th</sup> day of December, 2011.

“Terrance Sweeney”

Terrance A. Sweeney,  
Chair

“Linda J Anderson”

Linda J. Anderson,  
Industry Representative

“Guenther Kleberg”

Guenther Kleberg,  
Industry Representative

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<sup>6</sup> MFDA Penalty Guidelines, *op.cit*