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: Matthew Jason Bishop

Heard: November 17, 2020 by electronic hearing in Halifax, Nova Scotia
Decision: November 17, 2020
Reasons for Decision: May 18, 2021

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Noella Martin, Q.C.	Chair
Joshua Martin	Industry Representative
Dennis LeBlanc	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Roderick (Rory) Rogers	)	Counsel for the Respondent
Matthew Jason Bishop	)	Respondent

I. INTRODUCTION

1. At a Settlement Hearing by videoconference on November 17, 2020, this Hearing Panel was asked to accept a settlement agreement dated October 19, 2020 ("Settlement Agreement") negotiated between Staff of the Mutual Fund Dealers Association of Canada ("MFDA") and Matthew Jason Bishop ("Respondent").

2. Mr. Bishop was present before us and was represented by his counsel who also attended the hearing.

3. In accordance with section 24.4.3 of By-law No. 1 of the MFDA, a Settlement Agreement was referred to this Hearing Panel for acceptance or rejection. After hearing counsel for the parties, considering the exhibits filed and the submissions of counsel, and deliberating, we concluded that we should accept the Settlement Agreement. These are our written reasons for so doing.

II. THE SETTLEMENT AGREEMENT

4. The Settlement Agreement is attached as Schedule "1" to these Reasons for Decision.

5. Pursuant to this Settlement Agreement, the Respondent admitted that between June 1, 2014 and December 2018, the Respondent obtained and possessed and used to process transactions thirty-one (31) pre-signed account forms in respect of fifteen (15) clients, contrary to MFDA Rule 2.1.1.

6. The key portions of the Settlement Agreement entered into with the MFDA by the Respondent are as follows:

> ### III. AGREED FACTS
>
> **Registration History**
>
> 7. …[T]he Respondent has been registered as a mutual fund salesperson [now known as a dealing representative] with Worldsource Financial Management Inc. (the "Member"), a Member of the MFDA in Nova Scotia.
>
> 8. From October 2010 to December 2015, and since September 2017, the Respondent has been registered in Ontario.
>
> 9. From May 2012 to December 2013, the Respondent was registered in British Columbia as a dealing representative with the Member.

10. At all material times, the Respondent conducted business in the Halifax, Nova Scotia area.

Pre-Signed Account Forms

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

12. Between June 2014 and December 2018, the Respondent obtained, possessed, and used to process transactions, 31 pre-signed account forms in respect of 15 clients.

13. The pre-signed account forms consisted of: 10 Transfer Authorization for Registered Investments Forms; 8 New Plan Application Forms; 5 Investment Application Forms; 3 TFSA Application Forms; 2 New Client Application Forms; 1 Transfer of Non-Registered Accounts Form; 1 External Automatic Transactions Form; and 1 Purchase Form.

The Member's Investigation

14. In May 2019, the Member identified some of the pre-signed account forms that are the subject of this Settlement Agreement as a result of a routine audit of the Respondent's sub-branch location.

15. The Member then reviewed all of the Respondent's client files and it identified the remainder of the pre-signed account forms that are the subject of this Settlement Agreement.

16. In May 2019, the Member placed the Respondent under close supervision for a period of 12 months, and it did not identify any additional pre-signed account forms during this period.

17. On May 23, 2019, the Member issued a cautionary letter to the Respondent with regard to his use of pre-signed account forms described herein.

18. In June 2019, the Member sent letters to all clients whose accounts the Respondent serviced informing the clients that they should review their accounts and notify the Member if any account activity was unauthorized. No clients reported concerns to the Member.

19. In June 2020, the Member conducted a further audit of the Respondent's sub-branch location, during which it did not identify any additional pre-signed account forms. The Member required the Respondent to pay $750 toward the cost of this review.

Additional Factors

20. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he

would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

21. There is no evidence of client loss or lack of authorization for the underlying transactions.

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

23. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

III. GENERAL PRINCIPLES ON THE ACCEPTANCE OF A SETTLEMENT AGREEMENT

7. At a settlement hearing the role of a Hearing Panel is fundamentally different than its role at a contested hearing. The often-cited reasoning from the I.D.A. decision of *Milewski (Re)* succinctly sets out the role of the Hearing Panel at a settlement hearing:

> 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 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 at p. 10, Ontario District Council Decision dated July 28, 1999.

8. A Hearing Panel, pursuant to section 24.4.3 of MFDA By-law No. 1, has two options with respect to a settlement agreement; it can only accept or reject the settlement agreement.

9. It is clear from the jurisprudence emanating from the Courts and previous MFDA hearing panels that this Hearing Panel's task is not to decide whether we would have arrived at the same decision as that reached by the parties in this case. Rather, it is this Hearing Panel's responsibility to determine whether the penalty agreed upon falls within a reasonable range of appropriateness having regard to the conduct of the Respondent. If the negotiated settlement maintains the integrity of the investment industry, it is our duty to accept it.

10. In deciding whether to accept or reject the proposed Settlement Agreement in this matter, we have taken into account the following considerations as set out by previous decisions of Courts and MFDA hearing panels:

a) Whether acceptance of the Settlement Agreement would be in the public interest;
b) Whether the Settlement Agreement is reasonable in proportion to the conduct of the Respondent as set out in the Settlement Agreement;
c) Whether the Settlement Agreement addresses the issues of both specific and general deterrents;
d) Whether the proposed Settlement Agreement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
e) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
f) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA; and
g) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

> Re: P*rofessional Investments (Kingston) Inc. (Re),* [2009] MFDA, Ontario Regional Council, File No. 200836, Hearing Panel Decision dated March 24, 2009 at page 9.
>
> Re: *Melvin Robert Penny (Re),* [2009] MFDA, Atlantic Regional Council, File No. 200831, Hearing Panel Decision dated May 13, 2009, at page 8.
>
> Re: *Alden M. Kaley (Re),* MFDA, Atlantic Regional Council, File No 200911, Hearing Panel Decision dated August 21, 2009, at page 6.

11. We have also considered the factors that previous Hearing Panels have stated should be considered in determining whether a penalty is appropriate. These factors include the following:

a) The seriousness of the allegations proven against the Respondent;
b) The Respondent's past conduct, including prior sanctions;
c) The Respondent's experience and level of activity in the Capital Market;
d) Whether the Respondent recognizes that the conduct was improper and has demonstrated remorse;
e) The harm suffered by investors as a result of the Respondent's conduct;
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 the 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 determine whether not only those involved in the case being considered, but also any others participating in the capital markets engaged in a 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.

> Re: *Lamoureux (Re), [2002] A.S.G.D. No. 125* at para 11.
>
> Re: *In the matter of Robert Roy Parkinson* [2005] MFDA Ontario Regional Council, File No. 200509, Hearing Panel Decision dated February 21, 2006, at pp 25-26.
>
> Re: Alden M. Kaley (Re), [2009] MFDA Atlantic Regional Council, File No. 200911, Hearing Panel Decision dated September 28, 2009 at page 7.

12. We have also been guided by the MFDA Sanction Guidelines.

IV. STANDARD OF CONDUCT

13. Rule 2.1.1 of the MFDA Rules codifies the standard of conduct to which all Members and Approved Persons are held. It requires that Members and Approved Persons deal fairly, honestly and in good faith with its clients, observe high standards of ethics and conduct in the transaction of business, and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

14. Rule 2.1.1 was drafted broadly to protect the public interest and has been applied to prohibit a wide range of misconduct including the use of pre-signed forms.

> *Gibson (Re),* [2016] Hearing Panel of the Pacific Regional Council, MFDA File No. 201620, Panel Decision dated May 2, 2016.
>
> *Coelho (Re),* [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201551, Panel Decision dated February 19, 2016.
>
> *Weller (Re),* [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201544, Panel Decision dated February 19, 2016.
>
> *Richardson (Re),* [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201536, Panel Decision dated October 2, 2015.
>
> *Price (Re),* [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011.

V. THE SERIOUSNESS OF THE VIOLATION IN THIS MATTER

15. The use of pre-signed forms is not permitted. Hearing Panels have consistently held that obtaining or using pre-signed forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

16. In *Price (Re)*, [2011] MFDA File No. 200814, the Hearing Panel made the following comments on the use of pre-signed forms:

> Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading... 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... 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.

17. The prohibition on the use of pre-signed forms applies regardless of whether the client was aware or authorized the use of the pre-signed forms, or whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

18. Using pre-signed forms affects the integrity and reliability of the audit trail, has a negative effect on the Member's ability to respond to complaints, and creates the potential for misuse in the form of unauthorized trading, fraud, and misappropriation of client funds.

19. In the present case, the Respondent admits that he obtained and possessed thirty-one (31) pre-signed account forms in respect of fifteen (15) clients, contrary to MFDA Rule 2.1.1. In our opinion the use of pre-signed forms is serious misconduct deserving sanction.

20. In the case of these breaches of MFDA Rule 2.1.1 as admitted by the Respondent, we have considered the following facts in deciding whether or not to accept the Settlement Agreement as presented:

a) There is no evidence of client harm in the case; and

b) None of the Respondent's clients reported any concerns to the Member after being contacted about same; and

c) There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue beyond normal fees and commissions he would be entitled to had the transactions been properly carried out.

21. However, we also note that the Respondent is an experienced mutual fund salesperson and has not previously been the subject of MFDA disciplinary proceedings.

22. Under the terms of the Settlement Agreement, the penalties agreed to between the parties are as follows:

a) The Respondent shall pay a fine in the amount of $12,500 pursuant to section 24.1.1(b) of MFDA By-law No. 1; and

b) The Respondent shall pay costs in the amount of $2,500 pursuant to section 24.2 of MFDA By-law No. 1.

23. The Hearing Panel agrees that the penalties proposed in the Settlement Agreement are consistent with those issued in previous MFDA decisions under similar circumstances.

> *Gibson (Re),* (2016] Hearing Panel of the Pacific Regional Council, MFDA File No. 201620, Panel Decision dated May 2, 2016.
>
> *Coelho (Re),* [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201551, Panel Decision dated February 19, 2016.
>
> *Weller (Re),* (2016] Hearing Panel of the Central Regional Council, MFDA File No. 201544, Panel Decision dated February 19, 2016.
>
> *Harris (Re),* [2016] MFDA Pacific Regional Council, File No. 201558, Hearing Panel Decision dated July 5, 2016.

24. After considering the submissions and upon reviewing the relevant authorities, in our opinion the Settlement Agreement negotiated between the parties is in keeping with the purpose of the MFDA Rules which are intended to enhance investor protection and to promote public confidence in the Canadian Mutual Fund Industry.

25. We believe that the penalties provided for in the Settlement Agreement are within the range of reasonableness under the circumstances, will specifically deter the Respondent, Mr. Bishop, and will also deter others from engaging in similar misconduct, thereby protecting the investing public and fostering confidence in the Mutual Fund Industry in Canada.

26. After considering all of the above, we unanimously agree that the Settlement Agreement reached in this case was reasonable in the circumstances, is in the public interest, and is hereby accepted by this Hearing Panel pursuant to section 24.4.3 of the MFDA By-law.

DATED this 18th day of May, 2021.

"Noella Martin"
Noella Martin, Q.C.
Chair

"Joshua Martin"
Joshua Martin
Industry Representative

"Dennis LeBlanc"
Dennis LeBlanc
Industry Representative

DM 818065

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: Matthew Jason Bishop

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Matthew Jason Bishop (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"):

> Between June 2014 and December 2018, the Respondent obtained, possessed, and used to process transactions, 31 pre-signed account forms in respect of 15 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 $12,500 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 videoconference, 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. Since October 2004, the Respondent has been registered in Nova Scotia as a mutual fund salesperson/dealing representative[1] with Worldsource Financial Management Inc. (the "Member"), a Member of the MFDA.

8. From October 2010 to December 2015, and since September 2017, the Respondent has been registered in Ontario as a dealing representative with the Member.

9. From May 2012 to December 2013, the Respondent was registered in British Columbia as a dealing representative with the Member.

10. At all material times, the Respondent conducted business in the Halifax, Nova Scotia area.

Pre-Signed Account Forms

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

[1] In September 2009, the registration category mutual fund salesperson was changed to "dealing representative" when National Instrument 31-103 came into force.

12. Between June 2014 and December 2018, the Respondent obtained, possessed, and used to process transactions, 31 pre-signed account forms in respect of 15 clients.

13. The pre-signed account forms consisted of: 10 Transfer Authorization for Registered Investments Forms; 8 New Plan Application Forms; 5 Investment Application Forms; 3 TFSA Application Forms; 2 New Client Application Forms; 1 Transfer of Non-Registered Accounts Form; 1 External Automatic Transactions Form; and 1 Purchase Form.

The Member's Investigation

14. In May 2019, the Member identified some of the pre-signed account forms that are the subject of this Settlement Agreement as a result of a routine audit of the Respondent's sub-branch location.

15. The Member then reviewed all of the Respondent's client files and it identified the remainder of the pre-signed account forms that are the subject of this Settlement Agreement.

16. In May 2019, the Member placed the Respondent under close supervision for a period of 12 months, and it did not identify any additional pre-signed account forms during this period.

17. On May 23, 2019, the Member issued a cautionary letter to the Respondent with regard to his use of pre-signed account forms described herein.

18. In June 2019, the Member sent letters to all clients whose accounts the Respondent serviced informing the clients that they should review their accounts and notify the Member if any account activity was unauthorized. No clients reported concerns to the Member.

19. In June 2020, the Member conducted a further audit of the Respondent's sub-branch location, during which it did not identify any additional pre-signed account forms. The Member required the Respondent to pay $750 toward the cost of this review.

Additional Factors

20. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

21. There is no evidence of client loss or lack of authorization for the underlying transactions.

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

23. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

24. 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.

25. 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.

26. 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.

27. 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 agrees to waive any rights to a full hearing, a review hearing or appeal 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.

28. 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.

29. 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.

30. 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 19th day of October, 2020.

"Matthew Jason Bishop"
Matthew Jason Bishop

"JL"
Witness – Signature

JL
Witness – Print Name

"Charles Toth"
Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement

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: Matthew Jason Bishop

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 MFDA By-law No. 1 in respect of Matthew Jason Bishop (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 MFDA By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent, between June 2014 and December 2018, obtained, possessed, and used to process transactions, 31 pre-signed account forms in respect of 15 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 $12,500 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]