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: Brian Blundell

Heard: May 12, 2016, in Vancouver, British Columbia
Reasons for Decision: May 31, 2016

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield	Chair
Elaine Davison	Industry Representative
Brian Cheung	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Brian Blundell	)	In Person
	)	
	)	

1. On May 12, 2016, after hearing representations from counsel for the Mutual Fund Dealers Association of Canada (the "MFDA"), we approved a Settlement Agreement concluded on November 25, 2015, between the MFDA and Brian Blundell (the "Respondent").

2. The Respondent committed two defaults contrary to MFDA Rule 2.1.1, namely:

(a) between March 2010 and May 2014, he obtained, maintained and used to process redemptions 10 pre-signed account forms in respect of three clients, contrary to MFDA Rule 2.2.2; and

(b) he misled the Member, Worldsource Financial Management Inc., by affirming that he did not possess any pre-signed account forms when completing the Member's annual renewal questionnaire, contrary to MFDA Rule 2.1.1.

3. The Order we approved provides that:

(a) the Respondent shall pay a fine 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 $1,000 pursuant to s. 24.2 of By-law No. 1; and

(c) the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rules 1.1.2, 2.1.1, and 2.5.1.

Agreed Facts

4. The Respondent has been registered in the securities industry since 1988. He has been registered as a mutual fund salesperson (now known as a Dealing Representative) for Worldsource Financial Management Inc. ("Worldsource"), a Member of the MFDA, in British Columbia since January 21, 1993 and in Ontario since January 13, 2005. At all material times, the Respondent carried on business from the main branch located in Vancouver, British

Columbia, or a sub-branch office of Worldsource located in New Westminster, British Columbia.

5. At all material times, Worldsource's policies and procedures prohibited its Approved Persons from using blank or partially complete pre-signed account forms, including photocopies of pre-signed account forms, to conduct business.

6. In 2006, Worldsource issued a caution letter to the Respondent for obtaining and maintaining pre-signed account forms.

7. Between March 2010 and May 2014, the Respondent obtained, maintained and used to process redemptions 10 pre-signed account forms in respect of 3 clients. Three redemptions were completed by inserting investment instructions after the client had signed the form; two were perfected using partially completed forms and faxed signatures; two were completed using a form with a faxed signature and redemption instructions completed in ink; and two were completed using an imaged signature on a blank signed form.

8. Worldsource detected the Respondent's use of pre-signed account forms during an audit of the Respondent's sub-branch in August 2014. An audit of an additional 25 client files maintained by the Respondent did not reveal any other use of pre-signed forms. On August 20, 2014, the Respondent provided the MFDA with a written statement admitting the use of pre-signed forms. He stated that he engaged in the activities in order to facilitate redemption requests made by the clients.

9. On September 17, 2014, Worldsource issued a reprimand letter to the Respondent. The Member imposed a fine of $7,500; a charge of $1,000 in respect of the costs of the audit; undertook an additional review of the Respondent's sub-branch to ensure he was adhering to the Member's policies and procedures; required the Respondent to work under close supervision for a period of three months; and required pre-approval of all of the Respondent's trades by the Member's compliance department.

10. There is no evidence that the Respondent processed any trades or changes to client information without the knowledge or authorization of his clients; that clients suffered any financial harm as a result of the maintenance or use of the pre-signed account forms; or that he received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he was entitled. No clients complained about his conduct.

Staff Submissions

11. Counsel for the MFDA cites MFDA Rule 2.1.1:

> 2.1.1. **Standard of Conduct**. Each Member and each Approved Person of a Member shall:
>
> (a) deal fairly, honestly and in good faith with its clients;
> (b) observe high standards of ethics and conduct in the transaction of business;
> (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
> (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

12. Counsel notes that the obligation of Approved Persons, such as the Respondent, to comply with the policies and procedures of the Member with whom they are registered is a cornerstone of the self-regulatory system. Worldsource had policies and procedures in place explicitly prohibiting the use of pre-signed forms. The Respondent failed to comply with them. Other panels have determined, and it is now well-accepted, that the failure to comply with a Member's policies and procedures constitutes a breach of the standard of conduct imposed by the MFDA Rules.

> *In The Matter of Arnold Tonnies,* [2005] MFDA File No 200503, Prairie Regional Council

13. Counsel says that the dangers associated with the use of pre-signed account forms were aptly described by the hearing panel in *Re: Price*, 2010 MFDA File No. 200814, at paras. 122-

124:

> 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.

14. Finally, counsel says that the prohibition on the use of pre-signed account forms applies regardless of whether the client was aware of or authorized the use of the forms; and whether or not the forms were actually used by an Approved Person for discretionary or other improper purposes.

Panel Analysis

15. The use of a Settlement Agreement to reflect a negotiated settlement should be encouraged provided the penalties set forth in the agreement "strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense": *Re: Kelvin Donald Byce*, MFDA File No. 201311, September 4, 2013, Central Regional Council, para.5.

16. The Panel recognizes that it must accept or reject a Settlement Agreement in its entirety. It is well established that a Settlement Agreement should be approved if the sanctions imposed fall within the range of reason having regard for all of the relevant circumstances. The Panel is not permitted to amend the Settlement Agreement should it be of the view that some other penalty would be more appropriate. It will not reject a settlement unless it views the penalty as

clearly falling outside a reasonable range of appropriateness: see *Re: Sterling Mutuals Inc.*, 2008 MFDA File No. 100820.

17. In *Re: Jacobson*, MFDA File No. 200712, Prairie Regional Council, July 13, 2007, a panel stated that hearing panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

(a) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalties 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 the Settlement Agreement addresses the issues of both specific and general deterrence;

(d) Whether the proposed settlement 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.

18. The panel concludes from the number of cases cited by counsel and the frequent reminders provided by the MFDA to the industry that the use of pre-signed forms is an ongoing and frequent problem, and an issue of concern to the MFDA. The difficulty associated with penalty guidelines and their minimums and maximums is that is that they may not adequately reflect what is required to deter the use of pre-signed forms.

19. In this case, the penalty agreed to was the minimum of $5,000 per default coupled with an order to pay costs of $1,000, which is at the lower, if not the bottom end, of the scale. No

requirement for ongoing supervision was imposed, nor was a suspension imposed notwithstanding the warning in 2006, the use of pre-signed forms on 10 occasions in relation to three clients, and the fact that the Respondent misled Worldsource when responding to the Annual Renewal Questionnaire in the period from 2010 to 2014. But for the fact that Worldsource had also disciplined and fined the Respondent, the panel expresses the view that it would likely have found this settlement to "clearly fall outside" the range of reasonableness.

20. For the foregoing reasons, and notwithstanding the panel's concerns, the Settlement Agreement and the resulting Order were unanimously approved.

DATED this 31st day of May, 2016.

"Ian H. Pitfield"

Ian H. Pitfield
Chair

"Elaine Davison"

Elaine Davison
Industry Representative

"Brian Cheung"

Brian Cheung
Industry Representative

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