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: Shawn Bolt

Heard: September 25, 2013 in Toronto, Ontario
Reasons for Decision: October 11, 2013

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Ronald Willis	Industry Representative

Appearances:

Michelle Pong	)	For the Mutual Fund Dealers Association of Canada
Shawn Bolt	)	Respondent – Unrepresented by Counsel

1. By Notice of Settlement Hearing dated September 24, 2013, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") was convened to consider whether, pursuant to Section 24.4 of By-law No. 1 of the MFDA, the Panel should accept a Settlement Agreement, dated September 22, 2013, entered into by the Staff of the MFDA and the Respondent, Shawn Bolt.

2. Counsel did not appear for Mr. Bolt. In response to a question from the Panel, Mr. Bolt indicated that he had received the advice of counsel throughout the proceedings and was prepared to proceed without counsel being present.

3. At the outset of the proceedings, we considered a joint Motion by Staff and the Respondent to move the proceedings "in camera". We granted that motion. We then considered the provisions of the Settlement Agreement aided by submissions as to the applicable law which should guide this Panel in determining whether to accept or reject the Settlement Agreement.

The Allegations

4. In the Settlement Agreement, the Respondent admits that:

(a) Between at least 2009 and November 23, 2010, the Respondent obtained and maintained 246 pre-signed forms for 61 clients and used pre-signed forms to process transactions in client accounts, thereby:

(i) engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1(c); and

(ii) failing to comply with the Member's policies and procedures, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1; and

(b) Between at least 2009 and November 23, 2010, the Respondent delayed, at his discretion, the processing of transactions in client accounts, thereby failing to:

(i) process trades in client accounts on a timely basis, contrary to subsections 9.1(1) and (2) and 10.2(1) and (2) of National Instrument 81-102 and MFDA Rule 2.1.1; and

(ii) comply with the Member's policies and procedures, contrary to MFDA Rules

1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

5. We heard submissions from Staff and counsel for the Respondent concerning the facts of this matter and as to why this particular Settlement Agreement should be accepted by the Panel. After deliberation, we unanimously concluded that it was appropriate to accept the Settlement Agreement.

The Facts

6. At the time of the events under consideration, the Respondent was employed by Credential Asset Management Inc. ("Credential"), a Member of the MFDA, both as a mutual fund sales person and as a branch manager.

7. The Respondent took a leave of absence from Credential for medical reasons on November 23, 2010. A routine review of the Respondent's clients' files discovered several pre-signed forms in the files. On January 24, 2011, while the Respondent was still on medical leave, Credential conducted a further review of the Respondent's clients' files and discovered numerous additional pre-signed forms. MFDA staff became aware of this conduct on or about February 1, 2011 when Credential reported the findings which it had made. During the reviews as mentioned above Credential identified 246 blank or partially completed pre-signed forms pertaining to the accounts of 61 clients.

8. Upon investigation Credential learned that it was the Respondent's practice to obtain, maintain and use blank or partially completed pre-signed forms, commencing at least in the winter of 2009, to process transactions in clients' accounts. The Respondent would prepare a blank or partially completed pre-signed form with the essentials of a trade after discussing the trade with the client. This conduct was prohibited by Credential's written policies and procedures. The Respondent was aware of these policies and procedures.

9. Staff of the MFDA have not learned of any client complaints or found any evidence in their investigation of unauthorized trading relating to the Respondent's use of blank and partially completed pre-signed forms. This activity was clearly contrary to MFDA Rule 2.1.1(c) and failed to comply with the Rules of Procedures contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA

Rule 2.1.1. The Respondent told the investigator that he processed most transactions within a few days or weeks after receiving investment instructions from clients. It was his position that he did so to save time and allow him to meet with additional clients. He did not at that time advise any clients of risks associated with this practice of delaying the processing of transactions in their accounts.

10. In particular, the failure to process trades in two accounts resulted in adjustment costs of $1,217.53 and $1,377.70, which were covered by Credential.

11. In paragraph 28 of the Settlement Agreement, the Respondent's position is stated that he acted in this way because he was working close to 50 hours a week and was unable to process the trades on the same day that he met with the client. The Respondent indicated that he verbally informed Credential about the difficulties with his workload, but did not tell Credential the extent or severity to which he had fallen behind with his work.

Acceptance of the Settlement Agreement

12. As a Panel, we are obviously concerned with this type of conduct, however, we believe that the Settlement Agreement fairly addresses those concerns.

13. In determining whether the Settlement Agreement should be accepted, we have considered a number of factors. These include the following:

(a) 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 the Settlement Agreement addresses the issues of both specific and general deterrence;
(d) whether the proposed settlement will prevent the type of conduct, which is set out 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 Mutual Fund Dealers Association of Canada; and
(g) whether the Settlement Agreement will foster confidence in the regulatory process itself.

14. We believe that each and every one of these factors is dealt with in an appropriate fashion by the Settlement Agreement.

Submissions as to Penalty

15. Counsel for the MFDA confirmed a number of matters for the Panel: There was no evidence of material harm to any clients; no clients have complained; no clients have lost any funds or money; and, after his initial failure to disclose, the Respondent made a full and complete admission of his misconduct and cooperated with the MFDA investigators.

16. The Respondent admits that he is responsible for his conduct. He indicates that it was caused because of the long hours that he was working which, combined with illness of members of his family including cancer and heart treatment, caused him to take a stress leave in November of 2010. He confirms that he was terminated by Credential as a result of these events on April 4, 2011. He is not currently registered in the securities industry in any capacity. He made the comment to the Panel that he was very sorry for his misconduct. It was his view that he felt he was doing the best, but failed in all his efforts and therefore this particular Settlement Agreement and the penalty to be imposed is appropriate.

17. Enforcement Counsel submitted that there were a number of factors that should be considered as to the acceptance of the Settlement Agreement:

(a) the Respondent clearly admits his contraventions;
(b) the admissions by the Respondent reduced the cost and time involved in the process and led to certainty as to the procedures to be followed;
(c) the fine represents a substantial penalty to the Respondent having consideration of his financial income and resources;
(d) the Respondent has no past disciplinary history with the MFDA; and

(e) the Respondent's misconduct has not caused any financial loss to clients

18. For all of these reasons we have concluded that the Settlement Agreement is reasonable. In our considerations we have been mindful of the words found in *Re Milewski*, [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. The Panel made these comments at page 9:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement 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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

19. Accordingly, the following penalties and other terms of settlement are imposed upon the Respondent:

(a) the Respondent shall be prohibited for one (1) year from conducting securities-related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
(b) the Respondent shall be prohibited from acting in a supervisory capacity for five (5) years, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
(c) the Respondent shall pay a fine of $5,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, payable as follows:
    (i) $1,000 payable on or before September 25, 2013;
    (ii) $1,500 payable on or before January 31, 2014; and
    (iii) $2,500 payable on or before July 31, 2014;
(d) the Respondent shall pay $1,000 in respect of the costs of the investigation and settlement of this matter, pursuant to section 24.2 of MFDA By-law No. 1;
(e) the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.5.1 and 2.1.1 and subsections 9.1(1) and (2) and 10.2(1) and (2) of National Instrument 81-102; and
(f) the Respondent will attend in person, on the date set for the Settlement Hearing.

20. We were advised by Enforcement Counsel that the Respondent had tendered a cheque in the amount of $2,000 in payment of the September 25, 2013 payment and the costs as found in the terms of settlement.

21. After accepting the Settlement Agreement, we rescinded the "in camera" order and signed the Order as prepared and presented by Enforcement Counsel. We advised counsel that we would prepare brief reasons for our approval of the Settlement Agreement, which are set forth herein.

DATED this 11th day of October, 2013.

"John B. Webber"
The Hon. John B. Webber, Q.C.
Chair

"Brigitte Geisler"
Brigitte Geisler,
Industry Representative

"Ronald Willis"
Ronald Willis,
Industry Representative

DM 355783 v3