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: Jose Francisco Borges

Heard: January 25, 2018 in Toronto, Ontario
Decision: January 25, 2018
Reasons for Decision: February 27, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC	Chair
Edward Jackson	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Sarah Glickman	)	Counsel for the Mutual Fund Dealers Association of Canada
Brett Stephenson	)	Counsel for the Respondent
Jose Francisco Borges	)	Respondent, in person

Background

1. The Hearing Panel accepted the settlement agreement dated October 16, 2017 ("Settlement Agreement") between the staff of the MFDA and Jose Francisco Borges ("Respondent"). A copy of the Settlement Agreement is attached to these Reasons as Schedule "1". The agreed facts are set out in section III of the agreement.

Contraventions

2. The Respondent admitted that between January 2015 and March 2016, he obtained and possessed 22 pre-signed account forms in respect of 12 clients, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were: i) a fine of $6,500; ii) a costs award of $2,500.

Considerations

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the agreed penalty.

Nature of the Misconduct

5. Obtaining and possessing pre-signed account forms is conduct contrary to MFDA Rule 2.1.1.

Other considerations in determining acceptability of agreed penalties

6. The was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond any commissions and fees that he would normally be entitled to receive if the transactions had been carried out in the proper manner.

7. There was no evidence of client loss or lack of client authorization.

8. The Respondent has not previously been subject to MFDA disciplinary proceedings.

9. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

10. The agreed penalties are within the recommendations of the MFDA penalty guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

Costs

11. The costs award is reasonable.

Conclusion

12. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 27th day of February, 2018.

"Paul M. Moore"

Paul M. Moore, QC
Chair

"Edward Jackson"

Edward Jackson
Industry Representative

"Kenneth P. Mann"

Kenneth P. Mann
Industry Representative

DM 599937

Schedule "1"

Settlement Agreement

File No. 2017107

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SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Jose Francisco Borges ("Respondent"), consent and agree to settlement of this matter by way of this agreement ("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 MFDA:

a) between January 2015 and March 2016, the Respondent obtained and possessed, 22 pre-signed account forms in respect of 12 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 $6,500 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 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 in person, 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 1999, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative).

8. Since January 2015, the Respondent has been registered with FundEX Investments Inc. ("FundEX"), a Member of the MFDA.

9. At all material times, the Respondent conducted business in the Waterloo, Ontario area.

Pre-Signed Account Forms

10. At all material times, FundEX prohibited its Approved Persons, including the Respondent, from obtaining pre-signed account forms.

11. Between January 2015 and March 2016, the Respondent obtained and possessed, 22 pre-signed account forms in respect of 12 clients.

12. The pre-signed account forms included order forms, systematic instructions forms and new account application forms.

FundEX's Investigation

13. On March 15, 2016, during the course of a branch review, FundEX's compliance department identified the pre-signed account forms that are the subject of this Settlement Agreement.

14. As part of its investigation, FundEX reviewed 15 client files serviced by the Respondent and identified no further pre-signed account forms. FundEX also sent letters to the all clients serviced by the Respondent in order to determine whether the clients had concerns with any transactions processed in their accounts. No clients raised any concerns.

15. On March 22, 2016, FundEX issued a reprimand to the Respondent and placed him under close supervision for 90 days.

Additional Factors

16. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above other than the commissions or fees he would ordinarily be entitled to had the transactions been completed in the proper manner.

17. There is no evidence of client loss or lack of authorization.

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

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

IV. ADDITIONAL TERMS OF SETTLEMENT

20. 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.

21. 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.

22. 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.

23. 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 contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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.

24. 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.

25. 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.

26. 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 16th day of October, 2017.

"Jose Francisco Borges"
Jose Francisco Borges

"CH"
Witness – Signature

CH
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. 2017107

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Re: Jose Francisco Borges

ORDER

(ARISING FROM SETTLEMENT HEARING ON JANUARY 25, 2018)

WHEREAS on [date], the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Jose Francisco Borges ("Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] ("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 between January 2015 and March 2016, the Respondent obtained and possessed, 22 pre-signed account forms in respect of 12 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 $6,500 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 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]