



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: Thomas Earle Bott

Heard: January 31, 2019 in Toronto, Ontario

Decision: January 31, 2019

Reasons for Decision: February 28, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart

Edward V. Jackson

Guenther W. K. Kleberg

Chair

Industry Representative

Industry Representative

Appearances:

Alan Melamud

) Enforcement Counsel for the Mutual Fund

) Dealers Association of Canada

)

)

Thomas Bott

) Respondent, in person

)

)

I. INTRODUCTION

1. Proceedings were commenced by the Mutual Fund Dealers Association of Canada (“MFDA”) against Thomas Earle Bott (the “Respondent”) by Notice of Settlement Hearing, dated December 3, 2018, indicating that a settlement hearing would be held on January 31, 2019 in respect of a settlement agreement entered into between staff of the MFDA (“Staff”) and the Respondent, which was dated November 30, 2018 (the “Settlement Agreement”).

2. At the settlement hearing on January 31, 2019 the Hearing Panel considered the Settlement Agreement and, at the conclusion of the hearing, decided to accept it. These are our reasons for that decision.

II. RESPONDENT’S ADMITTED CONTRAVENTIONS

3. The Respondent admitted to the following violations of MFDA Rule 2.1.1:

- a) between November 2006 and April 2017, he obtained, possessed and, in some instances, used to process transactions, 51 pre-signed account forms in respect of 18 clients; and
- b) between October 2007 and February 2017, he altered, and used to process transactions, 3 account forms in respect of 3 clients by altering information on the account forms without having the clients initial the alterations.

III. AGREED SANCTION

4. Staff and the Respondent agreed to the following sanction:

- a) the Respondent shall be prohibited from engaging in securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 9 months, commencing on the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No.1; and

c) the Respondent shall pay costs of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1.

5. The Respondent also agreed to comply with MFDA Rule 2.1.1 in the future.

IV. AGREED FACTS

Registration history

6. Since 2004, the Respondent has been registered in the mutual fund industry and from December 2006 to February 2018, was registered as a mutual fund salesperson with FundEX Investments Inc. (“FundEX”), an MFDA Member.

7. FundEX terminated the Respondent’s registration with FundEX on February 7, 2018 and he is no longer registered in the securities industry.

Pre-Signed Account Forms

8. Between November 2006 and April 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 51 pre-signed account forms in respect of 18 clients. Those forms consisted of order entry, transfer, Know-Your-Client (“KYC”) update, and KYC information forms.

9. On April 8, 2015, during a branch audit, FundEX had identified 5 pre-signed forms in a client file serviced by the Respondent.

10. On May 25, 2015, the Respondent signed an acknowledgement to the branch audit report that identified the pre-signed forms and that advised the Respondent that pre-signed forms are not permitted under MFDA Rules and FundEX may take disciplinary action for such forms.

Altered Account Forms

11. Between October 2007 and February 2017, the Respondent altered, and used to process transactions, 3 account forms in respect of 3 clients by altering information on the account forms

without having the clients initial the alterations. Those forms consisted of order entry and KYC information forms.

FundEX's Investigation

12. On June 22, 2017, FundEX identified the subject pre-signed and altered account forms as a result of a routine branch audit.

13. On August 15, 2017, FundEX sent a letter to all clients whose accounts the Respondent serviced to determine whether the Respondent engaged in unauthorized trading. No concerns were identified.

V. CONSIDERATIONS

14. Section 24.4.3 of MFDA By-law No. 1 provides that a hearing panel may only accept or reject a settlement agreement in its entirety, and it is generally accepted that a hearing panel will not lightly interfere in a settlement agreement negotiated between Staff and a respondent. See, for example, *Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16 at para 37.

15. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily: whether it was proportionate and fell within a reasonable range of appropriateness having regard to the Respondent's misconduct and circumstances, the MFDA Sanction Guidelines and prior cases; and whether it would serve as a specific and general deterrent.

16. We found that obtaining and sometimes using 51 pre-signed account forms and altering and using 3 altered account forms constituted a serious breach of MFDA Rule 2.1.1. That rule requires Approved Persons to: deal fairly, honestly and in good faith with clients; observe high standards of ethics in the conduct of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

17. Obtaining and using pre-signed account forms and altering account forms may, among other things, affect the integrity of account documents, impede the ability of a Member to supervise accounts and possibly facilitate other misconduct, such as unauthorized trading and misappropriation.

18. There were several aggravating factors that we considered in reaching our decision, including that:

- a) the misconduct took place over an extended period of time;
- b) the Respondent continued the misconduct in respect of pre-signed forms after he had been found to have possessed pre-signed forms and had signed an acknowledgment relating to them; and
- c) the MFDA had been warning the industry against the use of pre-signed and altered account forms for a number of years, including in MFDA Bulletin #0661-E, dated October 2, 2015, after which some of the misconduct occurred.

19. We took into account several mitigating factors in reaching our decision, including that:

- a) there was no evidence that the Respondent received any benefit from the subject misconduct beyond commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner;
- b) there was no evidence of client loss or lack of authorization for the underlying transactions;
- c) the Respondent has not previously been the subject of MFDA disciplinary proceedings; and
- d) by entering into the Settlement Agreement, the Respondent saved the MFDA the time and expense of a full hearing.

20. We also noted that the Respondent's employment with the Member was terminated and he is no longer in the securities business.

21. The MFDA Sanction Guidelines indicate that a respondent's ability to pay may be a consideration in determining an appropriate monetary sanction. While we were of the view that it would normally be appropriate to impose a higher fine in relation to the misconduct, we have taken into account the Respondent's statement that, as a result of his financial situation, he is unable to pay any additional amounts toward a fine or costs.

22. The proposed penalties are within a reasonable range of appropriateness in light of prior MFDA hearing panel decisions in similar circumstances. While a number of the cases referred to

us involved a higher fine amount, most did not involve a suspension. In our view, a combination of the suspension with a lower fine amount in the circumstances is appropriate. It should deter the Respondent from engaging in such misconduct should he re-enter the industry and send a clear message to others about the seriousness of the misconduct.

VI. CONCLUSION

23. We concluded that the agreed sanction was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and personal circumstances, MFDA guidance and precedents and should serve as a specific and general deterrent. We decided in all the circumstances it was appropriate to accept the Settlement Agreement and we did so.

DATED this 28th day of February, 2019.

"Joan Smart"

Joan Smart
Chair

"Edward V. Jackson"

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Industry Representative

"Guenther W. K. Kleberg"

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