



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: Alan Dickson Brenchley

Heard: June 12, 2019 in Toronto, Ontario

Decision: June 12, 2019

Reasons for Decision: June 25, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC
Susan L. Dicks
Cheryl A. Hamilton

Chair
Industry Representative
Industry Representative

Appearances:

Alan Melamud)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Maureen Doherty)	Counsel for the Respondent
)	
)	
Alan Dickson Brenchley)	Respondent, in person
)	
)	

I. BACKGROUND

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (“MFDA”). The Settlement Hearing was held on Wednesday, June 12, 2019. The full Settlement Agreement, dated June 10, 2019, entered into between Staff of the MFDA and Alan Dickson Brenchley (“Respondent”) is available on the MFDA website. The Respondent appeared at the Hearing and was represented by counsel.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the hearing, with reasons to follow. These are our reasons for our decision to accept the Agreement.

3. From November 2005 to June 5, 2017, the Respondent was registered in Ontario and British Columbia as a mutual fund salesperson (now known as a Dealing Representative”) with FundEX Investments Inc. (“FundEX”), a Member of the MFDA. On June 5, 2017 the Respondent resigned from FundeEX.

4. Since July 28, 2017, the Respondent has been registered in Ontario and British Columbia as a Registered Representative with Aligned Capital Partners Inc., a dealer regulated by the Investment Industry Regulatory Organization of Canada (IIROC).

5. At all material times, the Respondent conducted business in the Toronto, Ontario area.

6. A Notice of Hearing was issued by the MFDA on September 18, 2018, alleging that “Between June 2006 and May 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 232 pre-signed account forms in respect of 27 clients, contrary to MFDA Rule 2.1.1.”

7. After several adjournments, a Settlement Agreement was entered into on June 10, 2019. The alteration of a number of forms was added to the alleged facts.

II. THE SETTLEMENT AGREEMENT

8. In Paragraph 4 of the Settlement Agreement, the Respondent admits that:

“between June 2006 and May 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 230 pre-signed account forms, and altered 5 account forms without obtaining client initials, in respect of 26 clients, contrary to MFDA Rule 2.1.1.”

9. The Settlement Agreement sets out in paragraph 5 the following terms of settlement:

“Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall be prohibited from conducting securities related business in any capacity in the employ of or associated with a Member of the MFDA for a period of 2 months from the date this Settlement Agreement is accepted, pursuant to section 24.1.1(e) of MFDA By-Law No.1;
- b) the Respondent shall pay a fine of \$25,000 in certified funds upon acceptance of this Settlement Agreement, pursuant to s.24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs of \$2,500, in certified funds upon the acceptance of this Settlement Hearing, pursuant to s.24.2 of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rule 2.1.1.; and
- e) the Respondent will attend in person on the date set for the Settlement Hearing.”

III. AGREED FACTS

10. The agreed facts are set out in detail in paragraphs 11 to 23 of the Settlement Agreement and will not be repeated in full here. In brief, there were 230 pre-signed account forms in respect of 26 clients. The pre-signed account forms consisted of order entry forms, deregistration/withdrawal forms, systematic instruction forms, investment account applications, transfer forms, and mutual fund trade tickets.

11. In addition, paragraphs 17 and 18 of the Settlement Agreement describe the alteration of 5 account forms in respect of 4 clients by altering information on the account forms without having the clients initial the alterations.

12. The vast majority of the forms (197 of the 230 forms) were deregistration/withdrawal forms with respect to 8 clients which were used to provide cash to these clients from a particular

investment fund (Barometer Capital Management Fund). The Settlement Agreement notes (paragraph 14) that the “Respondent states that to avoid having clients come in and sign a form each month, he had clients execute an undated...form, which he would photocopy, date, and enter a cash amount each month to process the withdrawal.” The Settlement Agreement also notes (paragraph 15): “The Respondent states that the practice was done for client convenience, since the distributions were made on a monthly basis over numerous years...the Respondent recently became aware that alternate methods existed for him to process the withdrawals without using pre-signed forms.”

IV. THE MISCONDUCT

13. MFDA Hearing Panels have consistently held that such conduct – using pre-signed forms and altering account forms – constitutes a contravention of the standard of conduct under MFDA Rule 2.1.1. See *Re Price* 2011 CanLII 72458; *Re Singh* 2014 LNCMFDA 12; *Re Symes* 2017 LNCMFDA 104; *Re Owen* 2017 LNCMFDA 287; *Re Lewis* 2018 LNCMFDA 59; *Re Pollon* 2018 LNCMFDA 54; and *Re Garofalo* 2016 LNCMFDA 119.

14. Using these forms are proscribed because their use adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation. See *Re Borrero* MFDA File # 201897.

15. For a number of years, the MFDA has been warning Approved Persons against the use of pre-signed, altered, and re-used account forms. See MFDA Staff Notice, MSN-0066, dated October 31, 2007 (updated January 26, 2017); and MFDA Staff Notice MSN-035, dated December 10, 2004 (updated March 4, 2013); MFDA Bulletin #0661 – E (October 2, 2015).

16. At all material times, FundEX’s policies and procedures prohibited its Approved Persons from using pre-signed account forms.

V. ACCEPTANCE OF THE SETTLEMENT AGREEMENT

17. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

18. The conduct in the present case is serious. Altered forms are especially serious because, unlike pre-signed forms that the client knows are blank when he or she signs the form, an alteration may be done without the client's knowledge.

19. This is not an isolated case. The conduct went on for many years with many clients.

20. The conduct is particularly serious because the Respondent had been warned about the conduct. Paragraph 22 of the Settlement Agreement states:

“On March 30, 2012, FundEX placed the Respondent under close supervision for 3 months after it identified 3 pre-signed account forms, 2 altered forms, and 2 instances of the Respondent copying and pasting a client signature onto account forms in client files serviced by the Respondent. The Respondent signed an Acknowledgement to FundEX stating that he would adhere to FundEX's policies and procedures, which prohibited using pre-signed account forms.”

21. The Settlement Agreement, however, notes a number of mitigating factors. (See paragraphs 20 and 24-29 of the Settlement Agreement.) FundEX conducted a review of all of the client files serviced by the Respondent and sent letters to all of the Respondent's clients to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns. There have been no client complaints as a result of the Respondent's misconduct.

22. 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.

23. Further, none of the 197 deregistration/withdrawal forms were used to conduct trading activity. These forms were solely used to transfer the cash generated from one particular fund in the clients' accounts to their bank accounts. Moreover, there is no evidence of discretionary trading, client loss, and/or lack of authorization.

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

25. The penalty of \$25,000 is not out-of-line with the new Sanctions Guidelines as well as the cases cited to us by counsel: *Re O'Connor* MFDA File No. 201756; *Re Sharma* 2018 LNCMFDA 33; *Re Burchill* 2017 LNCMFDA 170; and *Re Owen* 2017 LNCMFDA 287.

26. The monetary penalty and the two-month prohibition provide a significant measure of specific and general deterrence.

27. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Supreme Court stated in paragraph 49 of *British Columbia Securities Commission v. Seifert* [2006] B.C.J. No. 225, aff'd [2007] B.C.C.A. No. 484:

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.”

28. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel. Respecting settlements is particularly desirable in cases, such as this one, where experienced counsel were involved and where there were substantial negotiations.

29. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: “It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness.” There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated:

“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.”

30. The penalty and the costs agreed to in this case clearly fall within “a reasonable range of appropriateness.”

31. For the above reasons the Panel accepted the Settlement Agreement.

DATED this 25th day of June, 2019.

“Martin L. Friedland”

Martin L. Friedland, CC, QC
Chair

“Susan L. Dicks”

Susan L. Dicks
Industry Representative

“Cheryl A. Hamilton”

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