



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: Kelvin Donald Byce

Heard: August 19, 2013 in Toronto, Ontario
Reasons for Decision: September 4, 2013

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick H. Webber)	Chair
T. Hugh McNabney)	Industry Representative
Robert C. White)	Industry Representative

Appearances:

Lyla Simon)	Counsel, Mutual Fund Dealers Association of
)	Canada ("MFDA")
)	
Kelvin Donald Byce)	By teleconference
("Respondent"))	
)	

1. As a result of a Settlement Agreement, which is attached hereto as Schedule “1”, entered into between MFDA and the Respondent, a Settlement Hearing was conducted on August 19 2013 in Toronto. The Hearing Panel received and considered oral submissions from MFDA counsel and the Respondent, and the written submissions of the MFDA.

2. The contraventions alleged by the MFDA and admitted by the Respondent are set out in the Settlement Agreement and are as follows:

- i. in March 2012, the Respondent falsified one client’s signature on one KYC form, contrary to MFDA Rule 2.1.1; and
- ii. from at least October 9, 2008 to May 8, 2012, the Respondent obtained and maintained 23 blank pre-signed forms for 17 clients, contrary to MFDA Rule 2.1.1.

3. The Respondent agreed to the following terms of settlement:

- i. the Respondent shall pay a fine in the amount of \$5,000, pursuant to section 24.1.1(b) of By-law No.1;
- ii. the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
- iii. the Respondent shall attend the Settlement Hearing via teleconference; and
- iv. the Respondent shall in future comply with MFDA Rule 2.1.1.

4. The salient facts are set out in the Settlement Agreement attached hereto and need not be repeated in these reasons. In summary:

- a) The Respondent was employed with Royal Mutual Funds (“Royal”) at a Thunder Bay branch for approximately 10 years until May 2012, when he was terminated. He has no previous disciplinary history.

- b) The Respondent falsified a client's signature, and maintained 23 pre-signed forms. There were no client complaints and the Respondent did not benefit financially from the misconduct.
- c) In July 2012, the Respondent successfully completed the Canadian Securities Institute Canadian Securities Course, and in September 2012, he successfully completed the Canadian Securities Institute Conduct and Practices Handbook.
- d) Since February 2013, the Respondent has been a registered representative with BMO Nesbitt Burns Inc., an investment dealer and Member of the Investment Industry Regulatory Organization of Canada ("IIROC").

5. As stated in the MFDA written submissions, (citing Professional Investments (Kingston) Inc.(Re), 2009 LNCMFDA 9), the proper approach to determine whether the Panel should accept the Settlement Agreement is as follows:

"in a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the Parties have agreed to the penalties set out in the Settlement Agreement...[A] Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

This principle has been followed in a number of cases. This Panel agrees with the principle stated and has followed it in this case.

Given the standard of "reasonableness", it is the responsibility of this Panel to determine whether the penalties set forth in the Settlement 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.

6. The actions which the Respondent has admitted, as set out in paragraph 2 above, are infractions which merit sanctions from the standpoint of both specific and general deterrence. Even though there was no evidence that the Respondent intended to use the pre-signed forms for any improper purpose, the use of such forms is prohibited because the presence of client's signatures on such forms can no longer be taken as confirmation that the client authorized a particular trade and also compromises the Member's ability to investigate and respond to a client complaint concerning the propriety of trading in his/her account. For these reasons, pre-signed forms are prohibited regardless of whether the Approved Person's intention is to enhance client convenience, and irrespective of whether a client had ostensibly endorsed the practice.

7. On the other hand MFDA counsel's submissions set out a number of mitigating factors as follows:

- i. The Respondent was employed with Royal for 10 years. He had no previous disciplinary history.
- ii. There were no client complaints.
- iii. Following his termination from Royal, the Respondent successfully completed two industry courses in July and September 2012.
- iv. Since February 2013, the Respondent has been a registered representative with BMO Nesbitt Burns Inc., an investment dealer and Member of the IIROC.
- v. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to the settlement, has avoided the necessity of a full hearing on the merits.
- vi. By making admissions regarding his misconduct and entering into a Settlement Agreement, the Respondent has accepted responsibility for his actions.

8. MFDA counsel's submission also asked the Panel to consider:

- i. the proposed penalties will reinforce the message that pre-signed forms are not tolerated by the MFDA and the mutual fund industry, while at the same time acknowledging that cooperation with Staff and recognition of one's own misconduct are taken into account when determining the appropriate penalty.
- ii. the penalties agreed to will also act as a specific deterrent to the Respondent engaging in misconduct in the future.
- iii. A number of cases were referred to which indicated that the penalties agreed to in the Settlement Agreement were within a reasonable range.

9. Given the nature of the misconduct, the need for specific and general deterrence, the mitigating factors and the cases to which the Panel was referred, the Panel agreed that the terms of the Settlement Agreement were reasonable. Accordingly, the Settlement Agreement was accepted by the Panel which signed an order providing:

- i. The Respondent shall pay a fine in the amount of \$5,000, pursuant to s. 24.1.1(b) of By-law No. 1;
- ii. The Respondent shall pay costs in the amount of \$2,500, pursuant to s. 24.2 of By-law No. 1;
- iii. The Respondent shall in future comply with MFDA Rule 2.1.1; and
- iv. If at any time a non-party to this proceeding requests production of, or access to, any materials filed herein, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this 4th day of September, 2013.

“Frederick H. Webber”

Frederick H. Webber,
Chair

“T. Hugh McNabney”

T. Hugh McNabney,
Industry Representative

“Robert C. White”

Robert C. White,
Industry Representative

DM 351356 v1

Schedule "1"

Settlement Agreement

File No. 201311



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: Kelvin Donald Byce

SETTLEMENT AGREEMENT

INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to s. 24.4 of By-law No. 1 ("By-law No. 1"), a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Kelvin Donald Byce (the "Respondent").

JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in 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.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this 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.

ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

AGREED FACTS

Registration History

6. From January 31, 2002 to May 8, 2012, when he was terminated as a result of the events described herein, the Respondent was registered in Ontario as a mutual fund salesperson with Royal Mutual Funds Inc. (“Royal Mutual Funds”), a Member of the MFDA.

7. At the material time, the Respondent carried on business at a Royal Mutual Funds branch located in Thunder Bay, Ontario (the “Branch”).

8. On July 30, 2012, the Respondent successfully completed the Canadian Securities Institute *Canadian Securities Course*, and on September 24, 2012, he successfully completed the Canadian Securities Institute *Conduct and Practices Handbook*.

9. Since on or about February 21, 2013, the Respondent has been a registered representative with BMO Nesbitt Burns Inc., an investment dealer and Member of the Investment Industry Regulatory Organization of Canada.

10. The Respondent has no prior disciplinary history with the MFDA.

Falsification of Client's Signature

11. On or about March 9, 2012, the Respondent met with client JM in order to update Know Your Client ("KYC") forms for three accounts and make investments in respect of those accounts. Client JM completed three KYC forms which included entries regarding her annual income, investment objectives, and risk tolerance.

12. The Respondent noticed that one of the three completed KYC forms had inaccurate information regarding client JM's risk tolerance. The Respondent considered the KYC form to be void as a result of the inaccurate information and, therefore, drew a line through the form, did not obtain client JM's signature on the form, and did not sign the form himself in his capacity as the mutual fund salesperson.

13. Following the meeting with client JM, the Respondent submitted all three KYC forms (including the one he considered void), as well as the investment instructions for each of the accounts, to Royal Mutual Funds head office for processing.

Supervision by Royal Mutual Funds

14. On or about March 12, 2012, Royal Mutual Funds compliance staff notified the Respondent that one of the KYC forms was missing client JM's signature and his own signature, as previously described. Royal Mutual Funds compliance staff requested that the Respondent obtain the missing signatures.

15. Within approximately one hour of receiving the Royal Mutual Funds compliance staff request, the Respondent falsified client JM's signature on the KYC form, signed the form

himself as the mutual funds salesperson, and resubmitted the form to Royal Mutual Funds head office for processing.

16. The Respondent states that he had mistakenly believed that the KYC form was void and would not be used in any material manner.

17. Upon receipt of the resubmitted KYC form, Royal Mutual Funds compliance staff examined the signature purported to belong to client JM and determined that the signature was irregular. Royal Mutual Funds compliance staff also concluded it was unlikely that client JM would have attended the Branch to sign the KYC form in such a short time period as client JM lived approximately 100 kilometers away from the Branch.

18. On or about March 12, 2012, the Respondent's branch manager met with him to discuss the irregular signature identified by Royal Mutual Funds compliance staff. The Respondent, upon being made aware that the KYC form had not been void and had been used by Royal Mutual Funds, admitted that he had falsified client JM's signature.

19. The branch manager met with client JM in due course, whereupon the relevant KYC forms were correctly updated and signed by client JM.

20. The signature falsification that the Respondent made to client JM's KYC form did not alter her investing intentions and there was no client complaint.

21. The Respondent received no monetary benefit with respect to the signature falsification he made on the KYC form.

Blank Pre-Signed Forms

22. On or about June 16, 2012, Royal Mutual Funds received an inquiry from client RK, whose account had been serviced by the Respondent, regarding the status of some funds that were to be transferred into his Royal Mutual Funds account from another institution.

23. Royal Mutual Funds staff reviewed client RK's file and identified four blank pre-signed contribution forms.

24. Royal Mutual Funds staff then conducted a review of all of the Respondent's client files and found a further 19 blank pre-signed forms for 16 clients.

25. The 23 blank pre-signed forms identified by Royal Mutual Funds consisted of one close/withdrawal form and 22 contribution forms. All of the forms were signed original documents which could have been submitted to Royal Mutual Funds by the Respondent after being populated with the required information.

26. Royal Mutual Funds conducted a supervisory review of the accounts serviced by the Respondent and established that there were no client complaints against the Respondent.

CONTRAVENTIONS

27. The Respondent admits that:

- i. in March 2012, he falsified one client's signature on one KYC form, contrary to MFDA Rule 2.1.1; and
- ii. from at least October 9, 2008 to May 8, 2012, he obtained and maintained 23 blank pre-signed forms for 17 clients, contrary to MFDA Rule 2.1.1.

TERMS OF SETTLEMENT

28. The Respondent agrees to the following terms of settlement:

- i. the Respondent shall pay a fine in the amount of \$5,000, pursuant to section 24.1.1(b) of By-law No. 1;
- ii. the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
- iii. the Respondent shall attend at the Settlement Hearing via teleconference; and
- iv. the Respondent shall in future comply with MFDA Rule 2.1.1.

STAFF COMMITMENT

29. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part X below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

PROCEDURE FOR APPROVAL OF SETTLEMENT

30. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

31. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his right 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.

32. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then 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.

33. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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 him.

FAILURE TO HONOUR SETTLEMENT AGREEMENT

34. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of By-law No. 1 against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

35. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made 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 this Settlement Agreement or the settlement negotiations.

36. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that she will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

DISCLOSURE OF AGREEMENT

37. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this

Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

38. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

EXECUTION OF SETTLEMENT AGREEMENT

39. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

40. A facsimile copy of any signature shall be effective as an original signature.

Dated this 7th day of June, 2013.

Nikoleta Vitaskova
Witness – Signature

“Nikoleta Vitaskova”
Witness - Print name

“Kelvin Donald Byce”
Kelvin Donald Byce

“Shaun Devlin”
Staff of the MFDA
Per: Shaun Devlin
Vice-President, Enforcement



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Re: Kelvin Donald Byce

ORDER

WHEREAS on _____, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to s. 24.4 of MFDA By-law No. 1 ("By-law No. 1") in respect of Kelvin Donald Byce ("Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated June __, 2013 ("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 the Respondent:

- i. in March 2012, falsified one client's signature on one KYC form, contrary to MFDA Rule 2.1.1; and
- ii. from at least October 9, 2008 to May 8, 2012, obtained and maintained 23 blank or partially completed pre-signed forms for 17 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 \$5,000, pursuant to s. 24.1.1(b) of By-law No. 1;
2. the Respondent shall pay costs in the amount of \$2,500, pursuant to s. 24.2 of By-law No. 1;
3. the Respondent shall in future comply with MFDA Rule 2.1.1; and
4. if at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or 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]

DM 351356 v2