



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: David Careless

Heard: March 30, 2017 in Toronto, Ontario

Decision: March 30, 2017

Reasons for Decision: June 15, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Guenther K. Kleberg

Joan Smart

Chair

Industry Representative

Industry Representative

Appearances:

Sarah Glickman

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Counsel for the Mutual Fund Dealers
Association of Canada

David Careless

Respondent, In Person

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated September 12, 2016 (the “Settlement Agreement”) between the staff of the MFDA and David Careless (the “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 Settlement Agreement.

Contraventions

2. The Respondent admitted that:

- a) on or around February 3, 2014, he removed a hold placed by his Member on his RRSP Mutual Fund Account in order to complete a transaction, thereby failing to comply with the Member’s policies and procedures and to observe a high standard of conduct and ethics in the transaction of business, contrary to MFDA Rules 1.1.2, 2.5.2, and 2.1.1; and
- b) on March 18, 2014, he falsified a client signature on an account form, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were: i) a 6 months prohibition from transacting securities related business in any capacity while employed with a Member of the MFDA; ii) an order that the Respondent shall successfully complete the Conduct and Practices Handbook course offered by the Canadian Securities Institute within one year from March 30, 2017; and iii) a costs award of \$1,500.

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 him of the agreed penalty.

Nature of the Misconduct

5. The Respondent falsified a client's signature to complete a switch in the BMO Financial Planner's Mutual Fund Account, after receiving instructions from the client. The BMO Financial Planner authorized the transaction but was unaware that the Respondent had signed the redemption form. Hearing Panels have held that falsifying a client's signature is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1.

6. The Respondent, taking advantage of his position as a BMO mutual fund salesperson, personally removed the "hold" from a BMO RRSP Mutual Fund Account to complete a redemption that could not otherwise proceed.

7. MFDA Rule 2.5.1 requires Members to establish, implement and maintain policies and procedures to ensure that the handling of its business is in accordance with MFDA By-laws, Rules, and Policies, as well as with applicable securities legislation.

8. MFDA Rule 1.1.2, which governs compliance by Approved Persons, should be read in conjunction with MFDA Rule 2.5.1. The Hearing Panel in *Frank (Re)*, [2015], MFDA Central Council, Hearing No. (201407), at paras. 57-58, held that the failure of an Approved Person to comply with the Member's policies constitutes a regulatory violation.

9. In the present case, the Respondent admits that when he removed the “hold” from the RRSP Mutual Fund Account, he acted contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1. By taking advantage of his position as a mutual fund salesperson to remove the “hold”, he subverted the procedures that the Member had put in place to ensure that no monies were redeemed from the RRSP Mutual Fund Account while monies were owed on the RRSP Readiline Account.

Other considerations in determining acceptability of agreed penalties

10. There was no evidence of client harm, client complaints, or lack of client authorization.

11. The Respondent did benefit by his misconduct, obtaining access to monies that he would not otherwise have had access to.

12. The agreed penalties are significant and help the MFDA to send a message to the Respondent and others in the capital markets about the seriousness of the misconduct.

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

14. The Respondent is no longer registered in the securities industry in any capacity.

15. 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.

16. The MFDA penalty guidelines contemplate a prohibition in situations where the Respondent’s conduct violates MFDA Rules 1.1.2, 2.5.2 and 2.1.1.

17. The agreed penalties are within the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing panels in similar circumstances.

Costs

18. Although an award for costs of \$2,500 would be usual in settlements of this nature, the parties have agreed to a costs award of \$1,500, which we are not prepared to reject as inappropriate.

Conclusion

19. We concluded that the agreed penalties were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. We concluded, therefore, that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 15th day of June, 2017.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Guenther K. Kleberg”

Guenther K. Kleberg
Industry Representative

“Joan Smart”

Joan Smart
Industry Representative

Schedule “1”

Settlement Agreement

File No. 201623



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: David Careless

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, David Careless (the “Respondent”), consent and agree to settlement of this matter by way of this agreement (the “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) on or around February 3, 2014, the Respondent removed a hold placed by the Member on his RRSP Mutual Fund Account in order to complete a transaction, thereby failing to comply with the Member's policies and procedures and to observe a high standard of conduct and ethics in the transaction of business, contrary to MFDA Rules 1.1.2, 2.5.1, and 2.1.1; and
- b) on March 18, 2014, the Respondent falsified a client signature on an account form, 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 be prohibited for a period of 6 months from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall successfully complete the Conduct and Practices Handbook course offered by the Canadian Securities Institute within one year of the date of the acceptance of the settlement agreement by the Hearing Panel, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$1,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.5.1, and 2.1.1; and
- e) 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. From December 27, 2006 to April 4, 2014, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with BMO Investments Inc. (“BMO”), a Member of the MFDA. The Respondent was also registered as a mutual fund salesperson in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan, Quebec and the Yukon until October 26, 2009.

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

9. The Respondent is no longer registered in the securities industry in any capacity.

Removing Hold from Account

10. At all material times, the Respondent held a line of credit at BMO called a RRSP Readiline account (the “Readiline Account”). The purpose of Readline accounts is for clients to draw on the available funds to make RRSP investment contributions to a BMO RRSP Mutual Fund Account.

11. BMO placed a “hold” on the Respondent’s BMO RRSP Mutual Fund Account, in accordance with its general practice, in order to ensure that the Respondent did not redeem funds while owing money on the Readline Account.

12. On or around January 30, 2014, the Respondent drew on the RRSP Readline Account to purchase an investment in his BMO RRSP Mutual Fund Account in the amount of \$5,000.

13. On January 31, 2014, the Respondent instructed another BMO mutual fund salesperson (the “BMO Colleague”) to complete a redemption of \$5,000 in the BMO RRSP Mutual Fund Account (the “First Redemption”).

14. On or around January 31, 2014, BMO rejected the request for the First Redemption because of the “hold” placed on the Respondent’s BMO RRSP Mutual Fund Account.

15. On or around February 3, 2014, the Respondent reviewed his BMO RRSP Mutual Account on BMO’s internal system and identified that the First Redemption request had been rejected because of the “hold” on the account. The Respondent, taking advantage of his position as a BMO mutual fund salesperson, then personally removed the “hold” from his BMO RRSP Mutual Fund Account.

16. On February 3, 2014, the Respondent instructed the BMO Colleague to complete a second redemption of \$5,000 in the Respondent’s BMO RRSP Mutual Fund account (the “Second Redemption”). The Second Redemption was processed successfully.

17. On or around February 3, 2014, after the Second Redemption request was processed, the Respondent accessed the \$5,000 in redeemed funds.

Falsified Signature

18. On March 18, 2014, the Respondent received instructions from a client, who was also a BMO Financial Planner, to complete a switch in the BMO Financial Planner’s mutual fund account. In order to complete the transaction, the Respondent falsified the BMO Financial Planner’s signature on a redemption form.

BMO's Investigation

19. BMO's compliance staff detected the misconduct that is the subject of this Settlement Agreement in February 2014 during the course of a routine trade review and subsequent investigation.

20. BMO contacted the BMO Financial Planner, who confirmed that he authorized the transaction, but was unaware that the Respondent had signed the redemption form.

Additional Factors

21. There is no evidence of client harm, client complaints, or lack of authorization.

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

23. 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 merits.

IV. ADDITIONAL TERMS OF SETTLEMENT

24. 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.

25. 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.

26. 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.

27. 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 facts and the contraventions described in this Settlement Agreement. 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. 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.

28. 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.

29. 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.

30. 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 12th day of September, 2016.

“David Careless”

David Careless

“SN”

Witness – Signature

SN

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. 201623



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: David Careless

ORDER

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

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the “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: on or around February 3, 2014, the Respondent removed a hold placed by the Member on his RRSP Mutual Fund Account in order to complete a transaction, thereby failing to comply with the Member’s policies and procedures and to observe a high standard of conduct and ethics in the transaction of business,

contrary to MFDA Rules 1.1.2, 2.5.1, and 2.1.1; and on March 18, 2014, the Respondent falsified a client signature on an account form, 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 be prohibited for a period of 6 months from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. the Respondent shall successfully complete the Conduct and Practices Handbook course offered by the Canadian Securities Institute within one year of the date of the acceptance of the settlement agreement by the Hearing Panel, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
3. The Respondent shall pay costs in the amount of \$1,500 pursuant to s. 24.2 of MFDA By-law No. 1;
4. The Respondent shall in the future comply with MFDA Rules 1.1.2, 2.5.1, and 2.1.1; and
5. 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]