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: Ismail Cassim

Heard: February 5, 2019 in Toronto, Ontario
Decision: February 5, 2019
Reasons for Decision: April 24, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Brigitte J. Geisler	Industry Representative
Patrick Galarneau	Industry Representative

Appearances:

Francis Roy	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Eric Brousseau	)	Counsel for the Respondent
Ismail Cassim	)	Respondent, in person

Introduction

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on February 5, 2019. The full Settlement Agreement, dated January 29, 2019, entered into between Staff of the MFDA and Ismail Cassim ("Cassim" or the "Respondent") is available on the MFDA website. The Respondent, who appeared in person, was represented by counsel at the Hearing.

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.

3. From December 21, 2004 to January 18, 2017, the Respondent was registered in Ontario and Alberta as a mutual fund salesperson (now known as a dealing representative) with Global Maxfin Investments Inc. ("Global Maxfin" or the "Member"), a Member of the MFDA. He was also designated as a branch manager with the Member from September 28, 2009 to January 19, 2017. At all material times, the Respondent conducted business in Brampton, Ontario. He is not currently registered in the securities industry.

4. A Notice of Hearing was issued on August 21, 2018. A first appearance took place on October 9, 2018 and a hearing date was set for February 4-6, 2019. A Settlement Agreement, dated January 29, 2019, was later concluded between the parties and a Notice of Settlement Hearing issued on February 1, 2019. The Settlement Hearing took place on February 5, 2019.

5. The Notice of Settlement Hearing stated that the proposed Settlement Agreement concerned allegations that the Respondent:

a) between 2012 and January 15, 2015, collected, maintained or used at least 123 blank pre-signed and photocopied client account forms in respect of 28 clients, contrary to the Member's policies and procedures, and MFDA Rule 2.1.1;

b) between December 2011 and September 2014, processed at least 166 trades in 22 client accounts without recording or maintaining adequate evidence of any trade instruction provided by clients, contrary to the Member's policies and procedures, and MFDA Rules 5.1(b), 2.5, 1.1.2, and 2.1.1; and

c) on July 24, 2012, misled MFDA Staff during the course of its sales compliance examination of the Respondent's branch, contrary to MFDA Rule 2.1.1.

The Settlement Agreement

6. In Paragraph 24 of the Settlement Agreement, the Respondent admits the allegations set out in the previous paragraph.

7. Paragraph 25 of the Settlement Agreement sets out the terms of settlement:

"Upon acceptance of this Settlement Agreement, the Respondent agrees to the following terms of settlement:

a) the Respondent shall be prohibited from being registered as a dealing representative with a Member of the MFDA for a period of 1 year, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

b) the Respondent shall pay a fine in the amount of $15,000 (the "Fine"), pursuant to section 24.1.1(b) of By-law No. 1;

c) the Respondent shall pay the costs (the "Costs") of this proceeding and investigation in the amount of $5,000, pursuant to section 24.2 of By-law No. 1:

d) the Fine and Costs are to be paid by the Respondent as follows:

i. an initial payment to the MFDA in the amount of $5,000 upon acceptance of this Settlement Agreement; and

ii. commencing 30 days following acceptance of this Settlement Agreement, 6 additional, and consecutive, monthly instalment payments in the amount of $2,500 until the Fine and Costs are paid in full; and

e) the Respondent shall attend in person, on the date set for the Settlement Hearing.

Allegation #1: Pre-signed Forms

8. At all material times, the Member's policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining or using pre-signed account forms. In paragraph 12 of the Settlement Agreement, the Respondent "admits that between 2012 and January 15, 2015 he collected, maintained, or used at least 123 blank pre-signed and photocopied client account forms in respect of 28 clients."

9. Many MFDA cases have made it clear that pre-signed forms cannot be used by Approved Persons. Their use is a contravention of the required standard of conduct under MFDA Rule 2.1.1. See, for example, *Re Byce*, MFDA File No. 201311; *Re Price*, MFDA File No. 200814, and *Re O'Connor*, File No. 201756. As stated by the Panel in *Re Price* at paragraph 124:

> "Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading…At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client…Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account."

10. The MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years. See MFDA Staff Notice #MSN-0066, dated October 31, 2007 (updated March 4, 2013).

Allegation #2: Failure to Maintain Evidence of Client Instructions

11. The Respondent also admits in paragraph 24 of the Settlement Agreement "that he processed at least 166 trades in 22 client accounts without recording or maintaining adequate evidence of any trade instructions provided by clients." In these trades, as set out in paragraph 16 of the Settlement Agreement, the Respondent was using limited trading authorizations [see MFDA Rule 2.3.2] provided to him by the clients before he processed the trades," but he did so without "including, among other things, the particulars of the mutual funds he was going to trade for the clients and the date, time and manner in which the instructions were provided to him by the clients."

12. This conduct was contrary to the Member's policies and procedures and was contrary to MFDA Rules 2.5.1, 1.1.2, 5.1(b) and 2.1.1.

13. The objections to such conduct are similar to those concerning the use of pre-signed forms. As the Hearing Panel stated in *Re Wellman*, MFDA File No. 201529 at paragraph 13, stated:

> "The failure by an Approved Person to document a client's authorization of a trade may give rise to ramifications that are similar to those that result from the use of pre-signed account forms and altered account forms. Such ramifications include the destruction of the audit trail and the frustration of the Member's ability to respond to inquiries and complaints from clients concerning propriety of trading activity in their accounts."

Allegation #3: Misleading MFDA Staff

14. In paragraph 24 of the Settlement Agreement, the Respondent admits that he misled the MFDA during a sales compliance examination of his branch in 2012. The Settlement Agreement notes that in July 2012, MFDA Staff conducted an examination of the Respondent's branch as part of a scheduled sales compliance examination of the Member. On July 24, 2012, during an interview of the Respondent conducted by MFDA Staff, the Respondent falsely represented to MFDA Staff that he had not obtained and did not maintain blank pre-signed and photocopied client account forms in client accounts.

15. This is a clear violation of MFDA Rule 2.1.1. See *Re Bedard*, File No. 201772. As counsel for the MFDA argued: "The consequences of misleading the MFDA in this manner include the following possibilities: the misconduct may go undetected, client harm may arise, and an investigation may be closed down prematurely or diverted down an avenue of inquiry that wrongfully implicates others."

Acceptance of the Settlement Agreement

16. 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.

17. The conduct in this case was serious. It was done over a number of years and involved a large number of clients. It is particularly serious because the Respondent was the Branch Manager.

18. No client complained, however, and there is no evidence of client loss. Further, there is no evidence that the trades were unauthorized.

19. The Respondent has been in the securities business since 2004 and has not been the subject of MFDA disciplinary action.

20. The Respondent cooperated with MFDA Staff. Moreover, by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct, showed a measure of remorse, and saved the MFDA the time, resources and expenses associated with conducting a full hearing.

21. A fine of $15,000 is a significant penalty. By itself, it offers a substantial measure of specific and general deterrence. Coupled with the fine is a prohibition from being registered as a dealing representative with a Member of the MFDA for a period of 1 year, thus increasing the deterrence of the Respondent and others.

22. The penalties agreed upon in this case are consistent with the cases cited by counsel. See *Re Owen*, File No. 201784; *Re Yeung*, File No. 201502; *Re O'Connor*, File No. 201756; and *Re Bedard*, File No. 201772. They are also in line with the new MFDA Sanctions Guidelines.

23. The award of costs of $5,000 appears reasonable.

24. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

> "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."

25. 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, we were told, there were "significant negotiations."

26. 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."

27. The penalty and the costs agreed to in this case clearly fall within "a reasonable range of appropriateness."

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

DATED this 24th day of April, 2019.

"Martin L. Friedland"
Martin L. Friedland, CC, QC
Chair

"Brigitte J. Geisler"
Brigitte J. Geisler
Industry Representative

"Patrick Galarneau"
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