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: Tanya Francesca Castelino

Heard: June 4, 2020 in Toronto, Ontario
Decision: June 4, 2020
Reasons for Decision: June 30, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Guenther W.K. Kleberg	Industry Representative
Vas Pachapurkar	Industry Representative

Appearances:

Sarah Glickman	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Rafal Szymanski	)	Counsel for the Respondent, by videoconference
Tanya Francesca Castelino	)	Respondent, by videoconference

Background

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 by way of a video conference on Thursday, June 4, 2020. The full Settlement Agreement, dated May 13, 2020, entered into between Staff of the MFDA and Tanya Francesca Castelino ("Ms. Castelino" or the "Respondent") is available on the MFDA website and will not be set out in detail here. Ms. Castelino appeared at the Settlement Hearing and was represented by counsel.

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

3. The Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) from 2001 to 2009 and from 2010 to 2018 she was registered as a Dealing Representative with CIBC Securities Inc. (the "Member"), a Member of the MFDA.

4. On May 28, 2018, the Member terminated the Respondent's registration and she is not currently registered in the securities industry in any capacity. At all material times, the Respondent conducted business in the Toronto, Ontario area.

Allegations

5. Proceedings against the Respondent were commenced by a Notice of Settlement Hearing, dated March 19, 2020. In paragraph 4 of the Settlement Agreement the Respondent admits that:

a) between February 8, 2018 and April 4, 2018, the Respondent signed the signature or initials of 4 clients on 3 account forms, and submitted the forms to the Member for processing, contrary to MFDA Rule 2.1.1; and

b) on May 14, 2018 and May 28, 2018, the Respondent misled the Member during its investigation into her conduct when she falsely stated that she did not sign the signature or initials of 3 clients on 2 account forms, contrary to MFDA Rule 2.1.1.

Signing a client signature or initials on account forms

6. It is well known in the industry, as stated in an MFDA Staff Notice (MSN-0066, October 31, 2007 and updated March 4, 2013 and January 26, 2017) that "Members and Approved Persons may only use forms that are executed by the client after information on the form has been properly completed."

7. There are numerous MFDA cases dealing with improperly signing a client's name on a form or having pre-signed forms. See, for example, with respect to improper signatures: *Re Foley* MFDA File No. 201547; *Re Xiang He* MFDA File No. 201854; *Re Truong* MFDA File No. 201904; and *Re Tacarda* MFDA File No. 201958.

8. In both cases – signing a client's name on a form and using pre-signed forms – 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. As the Hearing Panel explained in *Re Price* MFDA File No. 200814 (at paragraphs 122-124), a case dealing with pre-signed forms, but the same is true with respect to signing a client's name on a form:

> "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."

Misleading the Member

9. The Respondent also admits in the Settlement Agreement that she misled the Member. Paragraphs 16 and 17 of the Agreement state: "On May 14, 2018 and May 28, 2018, as part of its investigation into the Respondent's conduct…the Member interviewed the Respondent… During the interviews, the Respondent falsely represented to the Member that she had not signed the signature or initials of 3 of the clients on 2 account forms."

10. Hearing Panels have held that providing the Member with incorrect information is a violation of MFDA Rule 2.1.1. See, for example, *Re MacWhirter* File No. 201541; *Re Xiang He* MFDA File No. 201854; and *Re Truong* MFDA File No. 201904.

Terms of Settlement

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

a) the Respondent shall pay a fine in the amount of $13,500 in certified funds upon acceptance of the Settlement Agreement; pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
b) the Respondent shall pay costs in the amount of $2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
d) the Respondent will attend in person on the date set for the Settlement Hearing.

Acceptance of Settlement Agreement

12. 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. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.

13. The conduct in the present case is serious. The Respondent was an experienced Approved Person. Misleading the Member is particularly serious. Moreover, signing a client's signature appears to us to be more serious than using pre-signed forms. Clients who pre-sign forms know that they have done so, but in the case of placing a client's signature on a document, the client may not know that the Approved Person has put their signature on a document. The possibility of subsequent improper conduct by the Approved Person increases in such a case.

14. In mitigation, no harm was suffered by investors in this case and the clients were aware of and authorized the transactions.

15. The Settlement Agreement notes in paragraph 15 that the Respondent "states that she signed the clients' signatures and initials on the account forms for the purpose of client convenience and greatly regrets her actions in this regard."

16. Further, the Respondent did not profit from the transactions except to the extent that she earned a regular commission. And by entering into a Settlement Agreement the Respondent has accepted responsibility for her misconduct and recognizes its seriousness.

17. A fine of $13,500 (plus costs of $2,500) is not an insignificant amount.

18. The penalty imposed is not out of line with the cases cited by counsel. See *Re Foley* MFDA File No. 201547; *Re MacWhirter* MFDA File No. 201541; *Re Richardson* MFDA File No. 201536; *Re Xiang He* MFDA File No. 201854; and *Re Truong* MFDA File No. 201904.

19. The Respondent has never been the subject of a disciplinary proceeding by the MFDA and cooperated with Staff during its investigation into her conduct. By entering into the Agreement, the Respondent saved the MFDA the time, resources, and expense associated with conducting a full hearing of the allegations.

20. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal affirmed the British Columbia Supreme Court's statement with respect to a settlement by the B.C. Securities Commission (*British Columbia (Securities Commission) v. Seifert* [2007] BCCA 484, paragraph 31):

> "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."

21. 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.

22. As a Hearing Panel stated (*Re Keshet*, September 3, 2014, File No. 201419 at paragraph 7), "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 Hearing Panels.

23. The penalty agreed to in this case falls within "a reasonable range of appropriateness."

24. For the above reasons we accepted the Settlement Agreement.

DATED this 30th day of June, 2020.

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

"Guenther W.K. Kleberg"
Guenther W.K. Kleberg
Industry Representative

"Vas Pachapurkar"
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