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: William James Clarke

Heard: February 11, 2014 in Edmonton, Alberta
Reasons for Decision: March 23, 2014

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, Q.C.	Chair
Howard Mix	Industry Representative
Richard Sydenham	Industry Representative

Appearances:

Faye Emmanuel	)	Enforcement Counsel, Mutual Fund Dealers
	)	Association of Canada
	)	
William James Clarke	)	Personally in attendance without counsel
	)	
	)	

Introduction

1. On December 3, 2013 the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA Bylaw No. 1 in respect of William James Clarke (the "Respondent").

2. The Respondent entered into a Settlement Agreement with MFDA Staff, dated November 26, 2013 for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1.

3. The Settlement Agreement provides that the Respondent pay a fine in the amount of $7,500 pursuant to section 24.1.1 of By-law No. 1, costs of the investigation and settlement of $2,500 pursuant to section 24.2 of By-Law No. 1, that he shall be prohibited from acting in a supervisory capacity with a Member of the MFDA for a period of six (6) months from the date of the acceptance of this Settlement Agreement, pursuant to section 24.1.1. of By-Law No. 1 and shall in future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rule 2.1.1.

4. On February 11, 2014, after hearing representations by counsel and by the Respondent, this Panel approved the Settlement Agreement, signed an Order to that effect and advised that written reasons for such approval would follow. Such reasons are set out below.

Agreed Facts

Registration History

5. The Respondent was registered as a mutual fund salesperson with Worldsource Financial Management Inc., a member of the MFDA, from March 14, 2003 to May 20, 2008, and from May 21, 2008 to October 11, 2012 as a mutual fund salesperson and Branch Manager with Investia Financial Services Inc., ("Investia") and with Investia in Ontario from August 22, 2008 to October 11, 2012, and in Saskatchewan from February 22, 2011 to October 11, 2012.

6. At the material times, Investia's policies and procedures prohibited its Approved Persons from using pre-signed forms to conduct business, but Investia found from a review of the Respondent's branch office on or about August 2, 2012 that he had obtained 115 account forms in relation to 54 client accounts signed by clients when the forms were blank or only partially complete and had used the forms to process transactions in relation to the accounts.

7. In particular, 72 account forms were signed by clients when the forms were blank, 39 account forms were signed by clients when the forms were partially complete, and four (4) of the account forms were altered by the Respondent after the clients had signed the forms.

8. With respect to these 115 account forms, 37 forms were used to process trades, 26 forms were used to update Know-Your-Client information and nine (9) forms were used to open client accounts.

9. Investia also found the Respondent had obtained six (6) account forms signed by clients when the forms were blank or only partially complete, but there was no evidence the Respondent had used the forms to process any transactions in relation to the accounts.

10. Immediately following the branch review, the Respondent on August 3, 2012 signed an Acknowledgement and Undertaking with Investia in which he agreed to cease using pre-signed forms of any kind and to abide by Investia's policies and procedures.

11. The Respondent stated that his practice was to send blank or partially completed account forms to clients by facsimile or email. The clients would sign the same and return them to the Respondent who would then contact the clients to obtain the information necessary to complete the account forms, which he would then complete himself and submit the completed account forms to Investia for processing.

12. The Respondent states that the transactions he processed using the pre-signed account forms described in paragraphs 7 and 8 were authorized by the clients but he did not maintain adequate notes of instructions he states he received from the clients.

13. Investia sent letters and copies of account transaction statements on or about August 17, 2012 to all clients whose accounts were serviced by the Respondent requesting they review the trading activities in their accounts and notify Investia of any unauthorized trading activities. None reported any unauthorized activities to Investia.

14. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond the sales commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner.

15. There is no evidence that the Respondent processed any trades or changes to client information without the knowledge or authorization of his clients.

16. There is no evidence that the clients suffered any financial harm as a result of the Respondent using, maintaining or altering account forms which the client had signed when blank or only partially completed or that any clients complained about the Respondent's conduct.

17. The Respondent had no prior disciplinary history with the MFDA and cooperated with Staff during the course of the investigation.

Contraventions

18. The Respondent admits that between 2008 and 2012 he used 115 blank or partially completed pre-signed forms to process transactions in relation to 54 client accounts, obtained and maintained six (6) blank or partially completed pre-signed account forms in relation to six (6) client accounts and altered four (4) account forms after the clients signed them, contrary to MFDA Rule 2.1.1.

Acceptance of the Settlement Agreement

19. This Panel has observed from the decision in *Price (Re),* MFDA File No. 200814 Hearing Panel of the Central Regional Council dated April 18, 2011 at paragraph 135 that Hearing Panels

of the MFDA, Investment Regulatory Organization of Canada and provincial securities commissions have confirmed that the possession and use of pre-signed forms is prohibited. That decision also noted at paragraphs 122-4 that pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading. At its worst, they create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client and they subvert the ability of a Member to properly supervise trading activity.

20. This Panel is mindful of the comments about the role of a Hearing Panel at a settlement hearing stated in *Sterling Mutuals Inc. (Re)* [2008] File No. 200820, Hearing Panel of the Central Regional Council dated August 21, 2008 at p. 9 that it "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."

21. This Panel is also mindful of the factors in determining whether a proposed settlement should be accepted which were listed in *Sterling Mutuals Inc. (Re) supra*, and in *Breckenbridge (Re)*, 2007 LNCMFDA 38, Hearing Panel of the Central Regional Council dated November 14, 2007 at para 77.

22. The Respondent admitted that he maintained 6 blank or partially completed account forms that had not been used but which, in and of itself, constitutes a violation of the MFDA rules.

23. This Panel has considered the following factors as relevant and aggravating:

a) Nature of the Misconduct – A significant number of blank or partially completed pre-signed forms (115) were obtained and used to process transactions in 54 client accounts over a 4-year period and the Respondent also altered 4 account forms after the clients had signed them.
b) Experience in the Securities Industry – The Respondent has worked in the securities

industry since 2003 and at the material times was registered as a branch manager and as a mutual fund sales person.

24. This Panel considers the following factors as mitigating:

a) Past Conduct – The Respondent has never previously been the subject of an MFDA disciplinary proceeding.
b) Recognition of Seriousness of the Misconduct – The Respondent has cooperated with the investigation by MFDA Staff, has accepted the responsibility for his misconduct by entering into the Settlement Agreement and spared the MFDA from time and expense of a contested hearing.
c) Client Harm and Benefits to Respondent – There was no evidence discovered of unauthorized trades or changes to client information, client complaints or loss and no evidence that the Respondent received a financial or other benefit through his conduct.

25. This Panel has also considered the following additional factors as relevant:

a) Deterrence – A fine, order for costs, 6 month suspension on the Respondent's ability to act in a supervisory capacity with a Member of MFDA is necessary to achieve both specific and general deterrence, to deter the Respondent from repetition of such conduct and to deter others in the capital market from engaging in similar activity.
b) Previous Decisions in Similar Cases – The recent decisions of *Sakkejha (Re)* MFDA File No. 201140 February 9, 2012 *and Rattenbury (Re)* MFDA File No. 201219 dated November 27, 2012 both imposed fines and costs awards in similar amounts to the fine and costs in this Settlement Agreement.
c) Penalty Guidelines – The Hearing Panel considered the MFDA Penalty Guidelines at page 27 for breach of the Standard of Conduct Rule 2.1.1., while noting that they are neither mandatory nor binding.

26. In conclusion, based on consideration of the above factors, this Panel is satisfied that the

Settlement Agreement is in the public interest, is reasonable and proportionate, and will foster public confidence in the integrity of the Canadian capital markets and the industry and, accordingly, approves its terms.

27. This Panel thanks Ms. Faye Emmanuel for her helpful presentation.

DATED this 23rd day of March, 2014.

"Shelley L. Miller"
Shelley L. Miller, Q.C.
Chair

"Howard Mix"
Howard Mix
Industry Representative

"Richard Sydenham"
Richard Sydenham
Industry Representative

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