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: Luigi Cristiano Congi

Heard: January 31, 2019 in Toronto, Ontario
Decision: January 31, 2019
Reasons for Decision: February 28, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart	Chair
Edward V. Jackson	Industry Representative
Guenther W. K. Kleberg	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Anthony Barile	)	Counsel for the Respondent
Luigi Congi	)	Respondent, in person

I. INTRODUCTION

1. Proceedings were commenced by the Mutual Fund Dealers Association of Canada ("MFDA") against Luigi Cristiano Congi (the "Respondent") by Notice of Hearing, dated May 2, 2018. The MFDA issued a news release on December 6, 2018 announcing that, as a result of a settlement agreement entered into between staff of the MFDA ("Staff") and the Respondent (the "Settlement Agreement"), a settlement hearing would be held on January 31, 2019.

2. At the Settlement Hearing on January 31, 2019 the Hearing Panel considered the Settlement Agreement and, at the conclusion of the hearing, decided to accept it. These are our reasons for that decision.

II. RESPONDENT'S ADMISSION OF CONTRAVENTION

3. The Respondent admitted that, between June 2015 and April 2016, he signed the signature of 21 clients on 23 account forms, and submitted the account forms to his Member firm for processing, contrary to MFDA Rule 2.1.1.

III. PROPOSED SETTLEMENT

4. Staff and the Respondent agreed to the following terms of settlement:

a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member for a period of 1 year, commencing from the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

b) the Respondent shall pay costs in the amount of $2,500, pursuant to section 24.2 of MFDA By-law No. 1, in instalments as follows:

   i. $500, in certified funds, on the date the Settlement Agreement is accepted by the Hearing Panel; and

   ii. $400, in certified funds, on or before the last business day of each of the first, second, third, fourth and fifth months following the acceptance of the Settlement Agreement; and

c) the Respondent shall in the future comply with MFDA Rule 2.1.1.

IV. AGREED FACTS

Registration History

5. Between May 2011 and May 2016, the Respondent was registered in Ontario as a mutual fund salesperson with BMO Investments Inc. ("BMO"), a Member of the MFDA.

6. On or about May 4, 2016, the Respondent resigned from BMO, and is not currently registered in the securities industry.

Respondent Signed Client Signatures

7. Between June 2015 and April 2016, the Respondent signed the signature of 21 clients on 23 account forms, and submitted the account forms to BMO for processing. The account forms included non-financial account amendment forms, existing account transaction forms, existing account application forms and account redemption forms.

8. In respect of 8 of the subject account forms, BMO compliance staff had identified deficiencies with 8 account forms during routine trade reviews and required the Respondent to obtain new signed account forms from the clients. Rather than appropriately correcting the deficiencies, the Respondent signed the clients' signatures on new account forms and submitted them for processing.

BMO's Investigation

9. On or around April 18, 2016, the Respondent's branch compliance officer identified irregular client signatures on account forms submitted by the Respondent.

10. BMO commenced an investigation and identified the subject account forms. BMO contacted 19 of the clients whose signature the Respondent signed on the account forms, who confirmed they authorized the underlying transactions. BMO was unable to contact 2 of the clients.

Additional Factor

11. The Respondent stated that he has limited financial means and is unable to pay additional amounts toward a fine or costs. He stated that he is the sole income earner for his family, the father of four children and supports his eldest child, who has a disorder and attends school for only 2 hours a day. His wife dedicates her time to volunteer work with Autism Ontario. The Respondent acknowledged that, absent these factors, it would have been appropriate for him to be subject to a fine due to the seriousness of the subject misconduct.

V. CONSIDERATIONS

12. Section 24.4.3 of MFDA By-Law No. 1 provides that hearing panels may only accept or reject a settlement in its entirety and it is generally accepted that hearing panels will not lightly interfere in a settlement agreement reached between Staff and a respondent. See for example *Sterling Mutuals Inc. (Re ,* 2008 LNCMFDA 16 at para 37.

13. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily whether it was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's conduct, the MFDA Sanction Guidelines and previous cases, and whether it would serve as a specific and general deterrent.

14. We found that signing the signature of 21 clients on 23 account forms and submitting them for processing constitutes a serious breach of MFDA Rule 2.1.1. That rule requires that Approved Persons: deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

15. Signing clients' signatures on account forms, among other things, adversely affects the integrity of account documents, impedes a Member's ability to supervise the accounts and may mask a host of regulatory issues, including unauthorized trading and misappropriation.

16. We considered as an aggravating factor that the MFDA had previously warned the industry against this kind of conduct, including in MFDA Bulletin #0661-E, dated October 2, 2015. In that

Bulletin the MFDA indicated it would be seeking increased penalties in upcoming cases involving client signature falsification.

17. We also considered as an aggravating factor that, in 8 of the cases where the Respondent signed a client's signature, it was in response to a supervisory inquiry from BMO, where the Respondent would clearly be expected to comply with his Member's requirements.

18. There were several mitigating factors we considered in reaching our decision, including that:

a) there was no evidence that the Respondent benefitted from the subject misconduct, other than usual commissions and fees;
b) there was no evidence of client loss or lack of authorization for the underlying transactions;
c) the Respondent had not previously been the subject of MFDA disciplinary proceedings; and
d) by entering into the Settlement Agreement, the Respondent accepted responsibility for his actions and saved the MFDA the time and expense of a full hearing.

19. Under the MFDA Sanction Guidelines, a respondent's inability to pay may be a consideration in determining appropriate monetary sanctions. While the Respondent's misconduct would normally warrant a fine, we were prepared to accept the one year prohibition and the imposition of $2500 in costs in light of the Respondent's personal and financial circumstances.

20. A one year prohibition should serve to deter the Respondent from engaging in this type of conduct should he re-enter the industry in the future and should send a clear message to others about the seriousness of the misconduct.

21. The proposed sanction was within a reasonable range in relation to previous decisions made by MFDA hearing panels in similar circumstances, albeit in our view at the lower end of such range.

VI. CONCLUSION

22. We concluded that the agreed sanction, including costs, was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and circumstances, MFDA guidance and precedents, and that it would serve as a specific and general deterrent. We decided in all the circumstances it was appropriate to accept the Settlement Agreement and we did so.

DATED this 28th day of February, 2019.

"Joan Smart"
Joan Smart
Chair

"Edward V. Jackson"
Edward V. Jackson
Industry Representative

"Guenther W. K. Kleberg"
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Industry Representative

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