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: Mark Andrew Courneya

Heard: October 27, 2016 in Toronto, Ontario
Decision: October 27, 2016
Reasons for Decision: May 23, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

H. Michael Kelly, Q.C.	Chair
Kenneth P. Mann	Industry Representative
Robert C. White	Industry Representative

Appearances:

Sarah Glickman	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
	)	
Natalia Vandervoort	)	Counsel for the Respondent
	)	
	)	
Mark Courneya	)	Respondent, In Person

1. As a result of a Settlement Agreement dated June 15, 2016 entered into by Staff of the Mutual Fund Dealers Association of Canada ("Staff") and Mark Andrew Courneya ("Respondent"), a Settlement Hearing was conducted on October 27, 2016 in Toronto, Ontario. The Hearing Panel, pursuant to s. 24.1 of MFDA By-law No.1, accepted the factual allegations set out in the Settlement Agreement, and the propriety of the penalty agreed to therein. The Order and Settlement Agreement are attached hereto as Schedules 1 and 2.

THE ADMITTED FACTS:

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.

Registration History

3. Since October 2007, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with FundEX Investments Inc. ("FundEX"), a Member of the MFDA.

4. At all material times, the Respondent conducted business in the Ancaster, Ontario area.

Pre-Signed Account Forms

5. At all material times, FundEX's policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining or using pre-signed account forms.

6. Between July 2010 and August 2013, the Respondent, obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 10 clients (in 8 client accounts). Eighteen of the pre-signed account forms were in respect of 2 clients.

7. The pre-signed account forms consisted of Order Entry Forms, Change of Dealer of Record forms, and Systemic Instruction forms.

Prior Use of Pre-Signed Account Forms

8. In September 2009, FundEX identified 2 pre-signed account forms in the Respondent's client files during a branch audit. On November 5, 2009, the Respondent signed an Acknowledgment and Undertaking with FundEX where he undertook not to use pre-signed account forms.

FundEX's Investigation

9. FundEX's compliance staff detected the misconduct that is the subject of this Settlement Agreement as a result of a branch audit in January 2014.

10. As part of its investigation, FundEX obtained confirmation that all affected clients serviced by the Respondent authorized the transactions in question.

11. Additionally, FundEX reviewed all of the Respondent's client files and sent a letter to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns.

12. The Respondent states that he obtained and used the pre-signed account forms for client convenience.

Additional Factors

13. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

14. There is no evidence of client harm.

15. The Respondent co-operated with FundEX's investigation into his conduct.

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

17. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

SETTLEMENT AGREEMENT:

18. The Respondent acknowledged that his conduct, referred to above, violated MFDA Rule 2.1.1, and Staff and the Respondent jointly recommended that the Hearing Panel accept the Settlement Agreement facts and the following penalties:

a) the Respondent shall pay a fine in the amount of $10,000 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 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.

REASONS FOR ACCEPTANCE OF THE SETTLEMENT AGREEMENT:

19. Pursuant to Rule 24.4.3 of MFDA By-law No.1, a Hearing Panel may either accept or reject a settlement agreement. A Hearing Panel will not, and should not, reject a settlement agreement unless the proposed penalty clearly falls outside the range of appropriate penalty.[1] An appropriate penalty is one that is fair and reasonable, addressing the nature and severity of the

[1] *Sterling Mutuals Inc. (Re) 2008* LNCMFDA16; *Milewski (Re)* [1999] I.D.A.C.D. No 17 Ontario District Council, 1999

infraction, the element of specific and general deterrence, and the preservation of investor and public confidence in the integrity of the investment industry.[2]

20. The use of pre-signed account forms is clearly a violation of Rule 2.1.1 , as confirmed by a number of Panel decisions, including the following:

a) *Byce (Re),* [2013], Hearing Panel of the Ontario Regional Council, MFDA File No.201311 : Panel Decision, dated September 4, 2013 ;
b) *Price (Re)* [2011] , Hearing Panel of the Ontario Regional Council, MFDA File No.200814, Panel Decision (Misconduct) dated April 18, 2011;
c) *MacWhirter* (*Re)* [2015] Hearing Panel of the Central Regional Counsel, MFDA File No. 201541, Panel Decision dated February 19, 2016.

21. A "Pre-signed Account Form" is a generic term that applies to any circumstance where an Approved Person seeks to rely upon a client's signature that was not provided by the client at the time that the document was completed. It is fundamental to compliance with Rule 2.1.1 that every transaction for the purchase or sale of an investment product, is explained to the investor client by the Approved Person, and is understood and approved by the client. The requisite details must be set out in the account form, and the client's signature affixed to the completed form, to confirm the client's understanding of the proposed transaction, and the client's instruction to proceed. Failure to perform in that manner opens the opportunity to an Approved Person to effect discretionary transactions, leads to destruction of the audit trail, and, in the worst case scenario, affords opportunity for fraud. The prohibition to the use of pre-signed account forms applies regardless of whether the client approved their use, or regardless of whether they were used to effect a transaction. This prohibition has been addressed directly in MFDA Staff Notice 0035 ("Recording and Maintaining Evidence of Client Trade Instructions") dated December 10, 2004 (updated March 4, 2013) ; MFDA Staff Notice 0066 ("Pre-signed Forms") dated October 31, 2007 (updated March 4, 2013); and MFDA Bulletin"0661-E", dated October 2, 2015. As well, a number of Panel decisions have confirmed this prohibition. The following

[2] *Jacobson (Re),* 2007 LNCMFDA 27, at para. 68

was contained in the Settlement Hearing Panel Decision in the case of *David Ewart, MFDA File No.201528*, dated September 11, 2015, paragraph 26:

> "The use of pre-signed forms raises a host of concerns. For example, an unscrupulous Representative may utilize these forms to misappropriate or otherwise place client funds at risk. A pre-signed form also promotes sloppiness, and makes it more likely that a client's instructions will inadvertently not be followed. Properly completed forms better ensure informed decision-making, and also provide some protection for the Representative from an allegation that he or she misunderstood or failed to follow the client's instructions."

22. Where an Approved Person fails to adhere to the standard of conduct set out in Rule 2.1.1, the MFDA Penalty Guidelines recommend one or all of the following (a) a minimum fine of $5,000.00; (b) requirement to write or rewrite an appropriate industry course; (c) suspension; (d) permanent prohibition in egregious cases.

23. Enforcement of strict compliance with the Rules of MFDA and those of the Member is fundamental to the protection of the investor, and to the integrity, and perceived integrity, of the investment industry. The Respondent breached Rule 2.1.1. He had been previously warned by the Member that he should not use pre-signed account forms, and he had provided to the Member written Acknowledgment and Undertaking, not to do so. That breach of undertaking is a significant aggravating factor, in the assessment of appropriate penalty. However, the "Additional Factors", noted above in Paragraphs 13 to 17, are significant mitigating factors, and, in the view of the Panel, support the efficacy of the Settlement Agreement.

24. The facts accepted by the Panel in the *Ewart* case, referred to above, closely resemble the facts admitted herein, including the mitigating factors. In *Ewart* the Hearing Panel approved a penalty of $15,000.00 plus costs of $2500.00. In *Ewart*, the Respondent, had obtained or retained Pre-Signed Forms, after having given to the Member, one written Acknowledgement and Undertaking to not do so. The Respondent herein had violated a similar undertaking, as noted above in paragraphs 8 and 9. However in *Ewart* the number of affected client files was greater, and there was evidence that some client forms were altered after signature.

25. The Panel is therefore satisfied that the penalty agreed to in the Settlement Agreement, in the amount of $10,000.00 is appropriate, and conforms to the parameters applied in other MFDA decisions addressing similar misconduct. The Panel also is satisfied that the agreement on costs in the amount of $2,500.00 is appropriate.

26. The Panel hereby confirms acceptance of the Settlement Agreement.

DATED this 23rd day of May, 2017.

"H. Michael Kelly"

H. Michael Kelly, Q.C.
Chair

"Kenneth P. Mann"

Kenneth P. Mann
Industry Representative

"Robert C. White"

Robert C. White
Industry Representative

DM 543352 v1

Schedule "1"

Order

File No. 201639

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: Mark Andrew Courneya

ORDER

(ARISING FROM SETTLEMENT HEARING ON OCTOBER 27, 2016)

WHEREAS on June 13, 2016, 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 Mark Andrew Courneya (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated June 15, 2016 (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 between July 2010 and August 2013, the Respondent obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 10 clients;

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall pay a fine in the amount of $10,000 pursuant to s.24.1.1(b) of MFDA By-law No. 1;

2. The Respondent shall pay costs in the amount of $2,500 pursuant to s. 24.2 of MFDA By-law No. 1;

3. The Respondent shall in future comply with MFDA Rule 2.1.1; and

4. 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 27th day of October, 2016.

"H. Michael Kelly"

H. Michael Kelly, Q.C.
Chair

"Kenneth P. Mann"

Kenneth P. Mann
Industry Representative

"Robert C. White"

Robert C. White
Industry Representative

Schedule "2"

Settlement Agreement

File No. 201639

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: Mark Andrew Courneya

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Mark Andrew Courneya, 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) between July 2010 and August 2013, the Respondent obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 10 clients, 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 pay a fine in the amount of $10,000 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 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.

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. Since October 2007, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with FundEX Investments Inc. ("FundEX"), a Member of the MFDA.

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

Pre-Signed Account Forms

9. At all material times, FundEX's policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining or using pre-signed account forms.

10. Between July 2010 and August 2013, the Respondent, obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 10 clients (in 8 client accounts). 18 of the pre-signed account forms were in respect of 2 clients.

11. The pre-signed account forms consisted of Order Entry Forms, Change of Dealer of Record forms, and Systemic Instruction forms.

Prior Use of Pre-Signed Account Forms

12. In September 2009, FundEX identified 2 pre-signed account forms in the Respondent's client files during a branch audit. On November 5, 2009, the Respondent signed an Acknowledgment and Undertaking with FundEX where he undertook not to use pre-signed account forms.

FundEX's Investigation

13. FundEX's compliance staff detected the misconduct that is the subject of this Settlement Agreement as a result of a branch audit in January 2014.

14. As part of its investigation, FundEX obtained confirmation that all affected clients serviced by the Respondent authorized the transactions in question.

15. Additionally, FundEX reviewed all of the Respondent's client files and sent a letter to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns.

16. The Respondent states that he obtained and used the pre-signed account forms for client convenience.

Additional Factors

17. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

18. There is no evidence of client harm.

19. The Respondent co-operated with FundEX's investigation into his conduct.

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

21. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

22. 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.

23. 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.

24. 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

25. 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 if applicable: 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.

26. 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.

27. 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.

28. 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 15th day of June, 2016.

"TL"
Witness – Signature

TL
Witness – Print name

"Mark Andrew Courneya"
Mark Andrew Courneya

"Shaun Devlin"
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

Schedule "A"

Order

File No. 201639

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: Mark Andrew Courneya

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 Mark Andrew Courneya (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 between July 2010 and August 2013, the Respondent obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 10 clients;

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

5. The Respondent shall pay a fine in the amount of $10,000 pursuant to s.24.1.1(b) of MFDA By-law No. 1;

6. The Respondent shall pay costs in the amount of $2,500 pursuant to s. 24.2 of MFDA By-law No. 1;

7. The Respondent shall in future comply with MFDA Rule 2.1.1; and

8. 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]