



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: Paul Leroy 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

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Counsel for the Mutual Fund Dealers
Association of Canada

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Natalia Vandervoort

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Counsel for the Respondent

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Paul 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 Paul Leroy 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 1998, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative).

4. Since May 2001, the Respondent has been registered with FundEX Investments Inc. (“FundEX”), a Member of the MFDA. The Respondent was also registered in Alberta until 2011 and British Columbia until 2012.

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

Pre-Signed Account Forms:

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

7. Between January 2010 and May 2013, the Respondent obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of 5 clients (in 4 client accounts). The Respondent submitted 9 of the pre-signed account forms to FundEX for processing. Seven of the pre-signed account forms were in respect of 1 client.

8. The pre-signed account forms consisted of Order Entry forms and Systemic Instruction forms.

Prior Use of Pre-Signed Account Forms

9. In July 2007, FundEX conducted a branch audit that identified 3 pre-signed account forms in the Respondent's client files. On July 20, 2007, the Respondent signed an Acknowledgment and Undertaking with FundEX wherein he undertook not to use pre-signed account forms.

10. In September 2009, FundEX conducted a branch audit that identified 2 pre-signed account forms (in 1 client account) in the Respondent's client files. On October 5, 2009, FundEX issued a warning letter to the Respondent and the Respondent signed a second Acknowledgment and Undertaking with FundEX where he again undertook not to use pre-signed account forms.

FundEX's Investigation

11. 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. FundEX immediately commenced an investigation.

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

13. 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.

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

Additional Factors

15. 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.

16. There is no evidence of client harm.

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

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

19. 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, and has accepted responsibility for his violation.

SETTLEMENT AGREEMENT:

20. 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 \$17,500 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:

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

22. 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.

23. 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

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

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 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."

24. 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.

25. Enforcement of strict compliance with the Rules of the 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 twice 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. Those breaches of undertaking are a significant aggravating factor, in the assessment of appropriate penalty. However, the "Additional Factors", noted above in Paragraphs 14 to 18, are significant

mitigating factors, and, in the view of the Panel, support the efficacy of the Settlement Agreement.

26. 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 two such undertakings, as noted above in paragraphs 8 and 9. The penalty of \$17,500.00 is appropriate.

27. The Panel is satisfied that the penalty agreed to in the Settlement Agreement, 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.

28. 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

Schedule “1”

Order

File No. 201640



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: Paul Leroy 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 Paul Leroy 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 January 2010 and May 2013, the Respondent obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of 5 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 \$17,500 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



Mutual Fund Dealers Association of Canada
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**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: Paul Leroy Courneya

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Paul Leroy 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 January 2010 and May 2013, the Respondent obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of 5 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 \$17,500 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 1998, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative).

8. Since May 2001, the Respondent has been registered with FundEX Investments Inc. ("FundEX"), a Member of the MFDA. The Respondent was also registered in Alberta until 2011 and British Columbia until 2012.

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

Pre-Signed Account Forms

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

11. Between January 2010 and May 2013, the Respondent obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of 5 clients (in 4 client accounts). The Respondent submitted 9 of the pre-signed account forms to FundEX for processing. Seven of the pre-signed account forms were in respect of 1 client.

12. The pre-signed account forms consisted of Order Entry forms and Systemic Instruction forms.

Prior Use of Pre-Signed Account Forms

13. In July 2007, FundEX conducted a branch audit that identified 3 pre-signed account forms in the Respondent's client files. On July 20, 2007, the Respondent signed an Acknowledgment and Undertaking with FundEX where he undertook not to use pre-signed account forms.

14. In September 2009, FundEX conducted a branch audit that identified 2 pre-signed account forms (in 1 client account) in the Respondent's client files. On October 5, 2009, FundEX issued a warning letter to the Respondent and the Respondent signed a second Acknowledgment and Undertaking with FundEX where he again undertook not to use pre-signed account forms.

FundEX's Investigation

15. 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. FundEX immediately commenced an investigation.

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

17. 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.

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

Additional Factors

19. 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.

20. There is no evidence of client harm.

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

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

23. 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

24. 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.

25. 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.

26. 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

27. 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.

28. 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.

29. 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.

30. 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

“Paul Leroy Courneya”

Paul Leroy Courneya

TL

Witness – Print name

“Shaun Devlin”

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

Schedule “A”

Order

File No. 201640



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: Paul Leroy 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 Paul Leroy 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 January 2010 and May 2013, the Respondent obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of 5 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 \$17,500 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]