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: Jennifer Claire Coward

Heard: March 29, 2018 in Toronto, Ontario
Decision: March 29, 2018
Reasons for Decision: July 20, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC	Chair
Kenneth P. Mann	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Sarah Glickman	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Jennifer Claire Coward	)	Respondent, by teleconference
	)	

Background

1. The Hearing Panel accepted the settlement agreement dated October 3, 2017 ("Settlement Agreement") between the staff of the MFDA and Jennifer Claire Coward ("Respondent"). A copy of the Settlement Agreement is attached to these Reasons as Appendix "A". The agreed facts are set out in Section III of the Settlement Agreement.

2. Although the Settlement Agreement provides that the Respondent shall appear in person at the settlement hearing, staff agreed and the panel accepted that the Respondent could attend the hearing by teleconference.

Contraventions

3. The Respondent admitted that on or about January 21, 2016, the Respondent processed a redemption in a client's account based upon email instructions from a third party who had gained unlawful access to the client's email, and subsequently misappropriated the proceeds of the redemption, thereby failing to comply with the Member's policies and procedures which prohibited her from accepting trade instructions by email, contrary to MFDA Rules, 1.1.2, 2.5.1 and 2.1.1.

Agreed penalties

4. The agreed penalties were: i) a 3 months prohibition from conducting securities related business in any capacity for a Member; and ii) a costs award of $2,500.

Considerations

5. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and

reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the agreed penalty.

Nature of the Misconduct

6. Not following a Member's policies and procedures regarding trading instruction and emails is conduct contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1.

Other considerations in determining acceptability of agreed penalties

7. The was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees the Respondent would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

8. There was no evidence of client loss or lack of client authorization.

9. The Respondent has not previously been subject to MFDA disciplinary proceedings.

10. The Member has terminated the employment of the Respondent and the Respondent is no longer registered in the securities industry in any capacity.

11. The Respondent has provided evidence to staff that the Respondent is unable to pay any further amount towards a fine or costs.

12. By entering into the Settlement Agreement, the Respondent has accepted responsibility for the misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

13. The agreed penalties are within the recommendations of the MFDA penalty guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

Costs

14. The costs award is reasonable.

Conclusion

15. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 20th day of July, 2018.

"Paul M. Moore"

Paul M. Moore, QC
Chair

"Kenneth P. Mann"

Kenneth P. Mann
Industry Representative

"Joseph Yassi"

Joseph Yassi
Industry Representative

DM 625703

Appendix "A"

Settlement Agreement

File No. 2017101

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Re: Jennifer Claire Coward

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Jennifer Claire Coward (the "Respondent"), 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) on or about January 21, 2016, the Respondent processed a redemption in a client account based upon email instructions received from a third party who had gained unlawful access to the client's email, and subsequently misappropriated the proceeds of the redemption, thereby failing to comply with the Member's policies and procedures which prohibited her from accepting trade instructions by email, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1.

5. Staff and the Respondent agree and consent 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 a Member of the MFDA for a period of 3 months, pursuant to s. 24.1.1(e) 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 Rules 1.1.2, 2.5.1 and 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. Between 1991 and February 1, 2017, the Respondent was registered in the mutual fund industry as a mutual fund salesperson (now known as a Dealing Representative).

8. Between 2004 and February 1, 2017, the Respondent was registered in Ontario with TD Investment Services Inc., a Member of the MFDA (the "Member").

9. On February 1, 2017, the Member terminated the Respondent's registration as a result of the conduct that is the subject of this Settlement Agreement and the Respondent is not currently registered in the securities industry in any capacity.

10. At all material times, the Respondent conducted business in the London, Ontario area.

Contravened Member's Policies and Procedures By Accepting Email Instructions

11. At all material times, client TD was a client of the Member whose account was serviced by the Respondent.

12. At all material times, the Member's policies and procedures prohibited its Approved Persons, including the Respondent, from accepting instructions to process a transaction via email, as follows:

> (t)he basic rule of mutual fund sales is "Know Your Customer". E-mail orders cannot be accepted from customers as the e-mail environment is not secure and there is no way to ensure the identity of the customer.

13. As described below in more detail, commencing on or about January 18, 2016, unbeknownst to client TD and the Respondent, an unknown individual (the "Third Party") gained unlawful access to client TD's email account and proceeded to correspond with the Respondent, purporting to be client TD. As a result of the email communications, the Respondent transferred monies into a bank account that, unbeknownst to the Respondent, did not belong to client TD.

14. On or about January 18, 2016, the Respondent received an email from a Third Party, posing as client TD, and requested that the Respondent process a wire transfer.

15. On January 18, 2016, the Respondent exchanged emails with the Third Party, who continued to pose as client TD, in order to determine amount of monies and the account from which the monies should be redeemed in order to process the wire transfer.

16. Ultimately, the Respondent received instructions from the Third Party to redeem $55,000 from the Respondent's mutual fund account, transfer the monies into client TD's US bank account, and wire transfer the $55,000 and $2,119.91 USD already held in client TD's US bank account to a foreign bank account provided by the Third Party.

17. On or about January 21, 2016, contrary to the Member's policies and procedures that prohibited accepting email trade instructions from clients, the Respondent processed the transactions described above.

Member's Investigation

18. On or about March 21, 2016, the Respondent's branch manager received a complaint from client TD that she did not authorize the transactions described above.

19. In response to client TD's complaint, the Member commenced an investigation, during which it reviewed 53 client files serviced by the Respondent and identified no further concerns.

20. The Member compensated client TD for the financial losses incurred as a result of the redemption.

21. On April 28, 2016, the Member issued a warning letter to the Respondent and imposed a three day unpaid suspension. On February 1, 2017, the Member terminated the Respondent's registration.

Additional Factors

22. There is no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

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

24. The Respondent has provided evidence to Staff that she is unable to pay any further amount towards a fine or costs.

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

IV. ADDITIONAL TERMS OF SETTLEMENT

26. 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.

27. 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. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

28. 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.

29. 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 the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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.

30. 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.

31. 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.

32. 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 3rd day of October, 2017.

"Jennifer Claire Coward"
Jennifer Claire Coward

"JP"
Witness – Signature

JP
Witness – Print Name

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

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Re: Jennifer Claire Coward

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 [Respondent] (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 on or about January 21, 2016, the Respondent processed a redemption in a client account based upon email instructions received from a third party who had gained unlawful access to the client's email, and subsequently misappropriated the proceeds of the redemption, thereby failing to comply with the Member's policies and procedures which prohibited her from accepting trade instructions by email, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1.

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

1. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA for a period of 3 months, 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 the future comply with MFDA Rule 2.1.1; and

4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all 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]