



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 Donald Craven

Heard: August 25, 2022 by electronic hearing in Toronto, Ontario

Decision: August 25, 2022

Reasons for Decision: September 13, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C, Q.C.

Robert Christianson

Kenneth P. Mann

Chair

Industry Representative

Industry Representative

Appearances:

Julie Grajales

) Enforcement Counsel for the Mutual Fund

) Dealers Association of Canada

)

Rafal Szymanski

) Counsel for Respondent

)

)

William Donald Craven

) Respondent

Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on Thursday, August 25, 2022. The full Settlement Agreement, dated July 20, 2022, entered into between Staff of the MFDA and William Donald Craven (the “Respondent”) is available on the MFDA website. The Respondent appeared at the Hearing with counsel.
2. The Panel accepted the proposed Settlement Agreement at the conclusion of the hearing, with reasons to follow. These are our reasons for our decision to accept the Agreement.
3. Since July 2021, the Respondent has been registered in Ontario and British Columbia as a dealing representative with Investia Financial Services Inc., a Member of the MFDA.
4. From March 2003 to July 2021, the Respondent was registered in Ontario and British Columbia as a dealing representative with FundEX Investments Inc. (“FundEX”), a Member of the MFDA. The Respondent was also registered as a dealing representative with FundEX in Nova Scotia from January 2008 to December 2014, and in Alberta from January 2013 to December 2014.
5. At all material times, the Respondent conducted business in the Chatham, Ontario area.
6. A Notice of Settlement Hearing was issued by the MFDA on July 20, 2022, alleging that:
 - a) between January 15, 2015 and July 20, 2020, the Respondent altered and used to process transactions 134 account forms in respect of 94 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
 - b) between November 1, 2016 and January 30, 2020, the Respondent obtained, possessed, and used to process transactions, 5 pre-signed account forms in respect of 5 clients, contrary to MFDA Rule 2.1.1.
7. MFDA Rule 2.1.1 subsections (a) to (c), provide:

“Each Member and each Approved Person of a Member shall: (a) deal fairly, honestly and in good faith with its clients; (b) observe high standards of ethics and conduct in the transaction of business; (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.”

The Settlement Agreement

8. In Paragraph 4 of the Settlement Agreement, the Respondent admits the allegations in paragraph 6 above.

9. In Paragraph 5 of the Settlement Agreement, Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall be suspended for a period of 30 days from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, commencing on the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount \$20,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- d) The Respondent shall successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an industry course acceptable to Staff of the MFDA, within 12 months of the acceptance of the Settlement Agreement;
- e) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- f) the Respondent shall attend in person or by videoconference on the date set for the Settlement Hearing.

Agreed Facts

10. The agreed facts are set out in paragraphs 7 to 20 of the Settlement Agreement and will not be repeated here in full.

11. At all material times, FundEX's policies and procedures prohibited Approved Persons from obtaining or using pre-signed account forms or from altering or correcting any information on a signed document without having the client initial the changes.

12. Between January 15, 2015 and July 20, 2020, the Respondent altered and used to process transactions 134 account forms covering a wide range of activities in respect of 94 clients by altering information on the account forms without have the clients initial the alterations. These

activities covered such areas as Know Your Client (KYC) Update Forms; Order Entry Forms; and RESP Educational Assistance Payment Forms, to name just a few of the many forms altered.

13. Between November 1, 2016 and January 30, 2020, the Respondent obtained, possessed and used to process transactions, 5 pre-signed account forms in respect of 5 clients.

14. In or around November 2020, during the course of a supervisory review, FundEX identified some of the account forms described above. Further review of client files did not identify any issues with the additional forms reviewed. FundEX also wrote to all active clients who had been serviced by the Respondent. No clients reported any concerns to FundEX.

15. On or about December 23, 2020, FundEx placed the Respondent on strict supervision. The Respondent completed his strict supervision on April 28, 2021 and paid FundEX \$1,875 fees in respect of strict supervision and \$1,260 in respect of the transaction statements and letters it sent to the clients.

The Misconduct

16. MFDA Hearing Panels have consistently held that obtaining or using pre-signed or altered forms is a contravention of the standard of conduct prescribed under MFDA Rule 2.1.1. See, e.g., the cases cited to us by counsel relating to penalty: *Re Ledingham* [2022] MFDA File No. 202151; *Re Hare* [2021] MFDA File No. 202141; *Re Perron* [2021] MFDA File No. 202041; *Re Mailloux* [2019] MFDA File No. 201955; and *Re Parlee* [2019] MFDA File No. 201964.

17. Using these forms are proscribed because their use adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation. See *Re Wong* [2021] MFDA File No. 201943; *Re Brenchley* [2019] MFDA File No. 2018102; and *Re Price* [2011] MFDA File No. 200814.

18. For a number of years, the MFDA has been warning Approved Persons against the use of pre-signed, altered, and re-used account forms. See MFDA Staff Notice, MSN-0066, dated October 31, 2007 (updated January 26, 2017); and MFDA Staff Notice MSN-035, dated December 10, 2004 (updated March 4, 2013); MFDA Bulletin #0661—E (October 2, 2015).

Acceptance of the Settlement Agreement

19. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.
20. The conduct in the present case is serious. This is obviously not an isolated case. The conduct went on for many years with many clients. Most of the contraventions occurred after the 2015 MFDA Bulletin #0661 relating to pre-signed and altered forms.
21. There are a number of mitigating factors. There is no evidence of any client loss, client complaints, or lack of client authorization resulting from the Respondent's conduct.
22. There is also no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees he 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. By entering into the Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.
25. The penalty of \$20,000 is not out-of-line with the Sanctions Guidelines as well as the cases cited to us by counsel: see *Re Ledingham* [2022] MFDA File No. 202151; *Re Hare* [2021] MFDA File No. 202141; *Re Perron* [2021] MFDA File No. 202041; *Re Mailloux* [2019] MFDA File No. 201955; and *Re Parlee* [2019] MFDA File No. 201964. All but the last two cases, involved both pre-signed and altered forms.
26. Apart from the monetary penalty, the Respondent has reimbursed FundEX over \$3,000 in connection with the costs of strict supervision and communication with the Respondent's clients.
27. Unlike three of the five cases cited to us, the Respondent, in addition to a fine, is suspended for a 30-day period from conducting securities related business in any capacity. This will affect the Respondent's income. Moreover, reinstatement by the Ontario Securities Commission may take additional time and again affect the Respondent's income.
28. The suspension and monetary penalty together provide a significant measure of specific and general deterrence.

29. Settlements can be important and useful in achieving outcomes which further the goals of securities regulation. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.”

30. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

31. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: “It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness.” There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated:

“A District Council considering a settlement agreement 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.”

32. The penalty and the costs agreed to in this case fall within “a reasonable range of appropriateness.”

33. For the above reasons the Panel accepted the Settlement Agreement.

DATED this 13th day of September, 2022.

“Martin L. Friedland”

Martin L. Friedland, C.C., Q.C.
Chair

“Robert Christianson”

Robert Christianson
Industry Representative

“Kenneth P. Mann”

Kenneth P. Mann
Industry Representative

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