



**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: Eronaldo De Souza**

Heard: July 28, 2016 in Toronto, Ontario  
Reasons for Decision: August 10, 2016

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Wanda Traczewski	Industry Representative
Paige A. Wadden	Industry Representative

Appearances:

Sarah Glickman	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
	)	
Eronaldo De Souza	)	In Person
	)	

## **Settlement Agreement**

1. The Hearing Panel in this matter accepted the settlement agreement dated May 24, 2016 (the “Settlement Agreement”) between the staff of the MFDA (“Staff”) and Eronaldo De Souza (the “Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in Section III of the agreement.

## **Contraventions**

2. The Respondent admitted that between June 2008 and January 2015, he obtained, possessed, and in two (2) instances, used to process transactions, four (4) pre-signed account forms in respect of one (1) client, contrary to MFDA Rule 2.1.1.

## **Agreed penalties**

3. The agreed penalties were that the Respondent will pay a fine in the amount of \$4,500 and costs of in the amount of \$2,500.

4. In addition, as a consequence of the misconduct, the Member removed the Respondent from his position as Branch Manager and placed him under close supervision.

## **Considerations**

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

### **Pre-signed account forms**

6. Hearing panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

*Byce (Re)*, [2013] Hearing Panel of the Ontario Regional Council, MFDA File No. 201311, Panel Decision dated September 4, 2013,

*Price (Re)*, [2011] Hearing Panel of the Ontario Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011

### **Certain other factors considered in assessing the appropriateness of the agreed penalties**

7. There was no evidence of client harm.

8. There was no evidence that the respondent received any financial benefit from engaging in the misconduct.

9. The respondent has been registered in the mutual fund industry since 2008. The respondent was also registered as a branch manager during the majority of the time period in question. He ought to have known and respected the compliance requirements of the Member and the MFDA.

10. The respondent has not previously been subject to MFDA disciplinary proceedings.

11. By entering into the settlement agreement, the respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

## **Deterrence**

12. The fine of \$4,500 and costs of \$2,500, are significant and send a message to the respondent and others in the capital markets with regard to the seriousness of the misconduct at issue in this proceeding.

## **Penalty guidelines**

13. The proposed penalties are consistent with the MFDA Penalty Guidelines. The guidelines suggest a minimum fine of \$5,000. The fine of \$4,500 is slightly lower than the suggested minimum fine, which reflects the low number of forms and clients identified.

## **Previous decisions**

14. The agreed penalties are within the reasonable range of appropriateness with regard to other decisions made by MFDA hearing panels in similar circumstances. In particular, we reviewed the following cases:

a) *Fenton (Re)* [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201607, Panel Order dated May 26, 2016, Tab 12,

b) *Wilson (Re)* [2016], Hearing Panel of the Central Regional Council, MFDA File No. 201562, Panel Order dated February 25, 2016, MFDA Staff's Book of Authorities, Tab 13

## **Fair and reasonable**

15. We questioned the respondent and were satisfied that although he was not represented by counsel, he understood the settlement agreement and earnestly wanted it accepted. He considered that the agreed penalties were fair and reasonable.

16. Whether agreed penalties are fair and reasonable will depend to a large degree on the particular facts and circumstances of a matter. Where agreed penalties are within an acceptable range based on precedents, and they serve as a specific and general deterrent, and the parties have the means to undergo a contested hearing but have reached a settlement, it is unlikely that a panel would conclude that the agreed penalties were unfair and not reasonable

### **Costs**

17. Costs of \$2,500 are reasonable in the circumstances.

### **Conclusion**

18. We concluded that the agreed penalties were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. We concluded, therefore, that the settlement agreement was in the public interest and, consequently, we accepted it.

**DATED** this 10<sup>th</sup> day of August, 2016.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Wanda Traczewski”

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Wanda Traczewski  
Industry Representative

“Paige A. Wadden”

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Paige A. Wadden  
Industry Representative



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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Eronaldo De Souza, 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: between June 2008 and January 2015, the Respondent obtained, possessed, and in two instances, used to process trades, 4 pre-signed account forms in respect of 1 client, 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 \$4,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (the “Fine”);
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 (“Costs”);
- c) the Fine and Costs shall be paid in seven installments: the first installment in the amount of \$2,500 shall be paid on the date of the settlement hearing, the remaining six installments in the amount of \$750 each are payable on or before the final business day of the six months that follow the date of the acceptance of the settlement agreement by the Hearing Panel;
- d) if the Respondent fails to make any of the installment payments described in subparagraphs (a)-(c) above when the payments become due, then without further notice to the Respondent, the Respondent shall summarily be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member until the full amount of the Fine and Costs have been paid;
- e) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- f) 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 June 2008, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with WFG Securities Inc. (“WFG”), a member of the MFDA.

8. The Respondent was registered as a Branch Manager with WFG between August 19, 2011 and February 23, 2015.

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

#### **Pre-Signed Account Forms**

10. Between June 2008 and January 18, 2015, the Respondent obtained, possessed, and in two instances, used to process trades, 4 pre-signed account forms in respect of 1 client.

#### **WFG’s Investigation**

11. WFG’s compliance staff detected the conduct that is the subject of this Settlement Agreement during a routine trade review on January 18, 2015 and its subsequent follow-up investigation.

12. As part of its investigation, WFG sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading in their accounts. No clients reported any concerns to WFG.

13. WFG also removed the Respondent from his position as Branch Manager. On February 18, 2015, WFG placed the Respondent under close supervision, which is still on-going as of the date of this Settlement Agreement.

14. In the course of WFG's review, the Respondent self-reported that he had used pre-signed account forms in respect of three other clients; however, the Member was unable to identify any pre-signed account forms for these clients in its review.

#### **Additional Factors**

15. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above, beyond the 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 has not previously been the subject of MFDA disciplinary proceedings.

18. 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**

19. 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.

20. 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.

21. 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

22. 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 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.

23. 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.

24. 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.

25. 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 15<sup>th</sup> day of March, 2016.

“SDS”  
\_\_\_\_\_  
Witness – Signature

SDS  
\_\_\_\_\_  
Witness – Print name

“Eronaldo De Souza”  
\_\_\_\_\_  
Eronaldo De Souza

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



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**ORDER**

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**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 Erondaldo De Souza (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 June 2008 and January 2015, the Respondent obtained, possessed, and in two instances, used to process trades, 4 pre-signed account forms in respect of 1 client;

**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 \$4,500 pursuant to s. 24.1.1(b) of MFDA By-law No.1 (the “Fine”);
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 (“Costs”);
3. The Fine and Costs shall be paid in seven installments: the first installment in the amount of \$2,500 shall be paid on the date of the settlement hearing, the remaining six installments in the amount of \$750 each are payable on or before the final business day of the six months that follow the date of the acceptance of the settlement agreement by the Hearing Panel;
4. If the Respondent fails to make any of the installment payments described in subparagraphs (1)-(3) above when the payments become due, then without further notice to the Respondent, the Respondent shall summarily be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member until the full amount of the Fine and Costs have been paid;
5. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
6. 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]