



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: Bertin Desjardins

Heard: July 26, 2019 in Charlottetown, Prince Edward Island

Decision: July 26, 2019

Reasons for Decision: September 6, 2019

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

R. Scott Peacock
Darrell Bing
Jason Downey

Chair
Industry Representative
Industry Representative

Appearances:

Brendan Forbes)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Joel Wonnacott)	Counsel for the Respondent
)	
)	
Bertin Desjardins)	Respondent, in person
)	
)	

1. The Panel approved a settlement agreement made between the parties on the 15th of July 2019 (“Settlement Agreement”).

Background

2. On the 10th of January 2019 the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-Law No. 1 in respect to a disciplinary hearing against Bertin Desjardins (the “Respondent”).

3. A First Appearance was held on the 1st of March 2019 and an Order was issued ordering *inter alia* that a Hearing on the Merits be held on the 26th of July 2019 at Charlottetown, Prince Edward Island.

4. Staff of the MFDA (“Staff”) entered into a Settlement Agreement with the Respondent on the 15th of July 2019. A copy of the Settlement Agreement is attached as Appendix “A” and forms part of these reasons.

The admitted misconduct

5. In the Settlement Agreement the Respondent admitted that:

- a) between March 2014 and November 2016, the Respondent obtained, possessed and, in some instances, used to process transactions, 51 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1; and
- b) between March 2014 and November 2016, the Respondent altered 7 account forms in respect of two clients by using liquid correction fluid to alter information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

6. Enforcement Counsel made written and oral submissions in respect to the serious nature of the Respondent’s misconduct. Emphasis was placed on the impact on the trust essential to securities transactions, the integrity of the process and the audit trail. Enforcement Counsel properly highlighted the necessity of strict compliance on the part of securities industry participants with rules and procedures put in place to protect investors and the integrity and safety of securities markets.

The proposed settlement

7. The Settlement Agreement made provisions for the following sanctions:
- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ or associated with any MFDA member for a period of 9 months commencing from the date of the final Order herein, pursuant to s. 24.1.1(e) of MFDA By-law No.1;
 - b) the Respondent shall pay costs in the amount of \$2,500.00 in certified funds upon acceptance of the Settlement Agreement pursuant to s. 24.2 of the 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.

Submission of the Parties

8. Enforcement Counsel made reference to cases provided in the Book of Authorities in respect to sanctions proposed in the Settlement Agreement. Particular emphasis was placed by Enforcement Counsel on *Caswell [2018] File No. 201833*; *Cohart [2019] File No. 20184*; *Archer [2019] File No. 201855*; and *Bott [2019] File No. 2018121*.

9. The Panel was directed by Enforcement Counsel to the provisions of the MFDA Sanction Guidelines. Submissions were made in respect to section 11 in particular:

“11. Ability to pay- The Respondent’s ability to pay may be a consideration in determining the appropriate monetary sanction to be imposed....The Burden is on the Respondent to raise the issue and to provide evidence of inability to pay such as tax returns or audited financial statements. Evidence of *bona fide* inability to pay may result in a reduction or waiver of a fine or the imposition of an installment payment plan....”

10. The Settlement Agreement frames the sole source of facts to be considered by the Panel, unless all parties agree to provide additional facts, in deciding whether or not to approve the Settlement Agreement. The Settlement Agreement provided in paragraphs 20 and 21:

“20. The Respondent states that he is now retired, on a fixed income, and does not intend to return to the securities industry. The Respondent is currently the primary caregiver to a family member with a serious medical condition who requires constant care, and whose

condition has required that substantial alterations be made to the Respondent's family residence.

21 The Respondent states that as a result of the foregoing, he has limited financial means and is unable to pay additional amounts towards a fine or costs. The Respondent acknowledges that absent the factors described above, it would be appropriate for him to be subject to a penalty that includes a fine, due to the seriousness of the misconduct that is the subject of this Settlement Agreement.”

Enforcement Counsel made representations to the Panel that efforts were made to substantiate the Respondents financial status and that Staff was satisfied that the Respondent's ability to pay was a *bona fide* factor for the panel to consider in its deliberation.

11. Counsel for the Respondent joined with the Enforcement Counsel in recommending the acceptance of the Settlement Agreement as being fair and proportionate while providing appropriate general and specific deterrence.

The Decision

12. The Panel had concern that the Settlement Agreement did not provide for a disposition it would have imposed considering the admitted facts. Absent a Settlement Agreement the Panel would have made some other disposition. The Panel considered and gave weight to Counsel's submissions in respect of the penalties contained in the Settlement Agreement, the principles of general and specific deterrence, the cases cited and the provisions of the Sanctions Guidelines.

13. It is well established that Panels must give substantial and due deference to the provisions of a Settlement Agreement freely negotiated between parties in full knowledge of all of the facts and considerations. Those facts and considerations might not be apparent to the reader of a Settlement Agreement. Enforcement Counsel referred the Panel to *Milewski (re) [1999] 1 IDACD No.17*. In the decision in that case the Panel of the Ontario District Council of the IDA stated:

“... A penalty under a settlement agreement is likely to be at the low end of the spectrum in view of the fact that the settlement is negotiated, permits the Association's staff to avoid the costs of a contested hearing and guarantees them a favorable result.

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making penalty determinations after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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 facts that the parties have agreed. It will not reject a settlement agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest of the settlement process in consideration of specific settlements” (emphasis added)

Enforcement Counsel also referred the Panel to *Sterling Mutual Funds Inc. (Re), 2008 LNCMFDA 16* where the MFDA considered *Milewski*.

14. In consideration of all of these factors the Panel accepted the proffered Settlement Agreement as being consistent with the principles set out in *Milewski* and not being contrary to the public interest.

DATED this 6th day of September, 2019.

“R. Scott Peacock”

R. Scott Peacock
Chair

“Darrell Bing”

Darrell Bing
Industry Representative

“Jason Downey”

Jason Downey
Industry Representative

DM 693041



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: Bertin Desjardins

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and Bertin Desjardins (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 Mutual Fund Dealers Association of Canada ("MFDA"):

- a) between March 2014 and November 2016, the Respondent obtained, possessed and, in some instances, used to process transactions, 51 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1; and
 - b) between March 2014 and November 2016, the Respondent altered 7 account forms in respect of two clients by using liquid correction fluid to alter information on the account forms without having the client initial the alterations, 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 be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 9 months commencing from the date of the final Order herein, 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 in certified funds upon acceptance of the Settlement Agreement, 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. The Respondent was first registered in the mutual fund industry in Prince Edward Island in September 1996.

8. From February 2014 to March 2017, the Respondent was registered in Prince Edward Island as a mutual fund salesperson (now known as a dealing representative)¹ with Quadrus Investment Services Ltd. (the “Member”), a Member of the MFDA.

9. On March 27, 2017, the Respondent resigned from the Member.

10. At all material times, the Respondent conducted business in the Charlottetown, Prince Edward Island area.

Pre-Signed Account Forms

11. At all material times, the Member’s policies and procedures prohibited its Approved Persons from using pre-signed client account forms. Specifically, the Member’s policies and procedures required all Approved Persons to obtain a client signature on a trading form to authorize a trade only at the time when an order was made and the form prepared to process the trade was completed.

12. Between March 2014 and November 2016, while the Respondent was an Approved Person of the Member, he obtained, possessed, and in some instances, submitted to the Member for processing, 51 pre-signed account forms in respect of 13 clients.

13. The pre-signed account forms included a Redemption Form, 2 Know-Your-Client (“KYC”) Information Update Forms, 2 Investment Switch/Conversion Forms, an Investment Application Form, and 45 Transfer Authorization Forms.

Altered Account Forms

14. At all material times, the Member’s policies and procedures prohibited its Approved Persons from using altered client account forms.

15. Between March 2014 and November 2016, the Respondent altered 7 account forms in respect of two clients by using liquid correction fluid to alter information on the account forms without having the clients initial the alterations.

¹ In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

16. The Respondent used liquid correction fluid to alter the dates on the 7 transfer authorization forms.

The Member's Investigation

17. In November 2016, the Member conducted an audit of the client files maintained by the Respondent, and identified the pre-signed and altered forms that are the subject of this Settlement Agreement.

18. On December 2, 2016, after completing its investigation, the Member placed the Respondent under close supervision for 1 year.

19. The Member sent letters to clients whose accounts the Respondent serviced to determine whether the altered and pre-signed forms used by the Respondent were accurate and authorized. No clients responded to the Member's letters.

Additional Factors

20. The Respondent states that he is now retired, on a fixed income, and does not intend to return to the securities industry. The Respondent is currently the primary caregiver to a family member with a serious medical condition who requires constant care, and whose condition has required that substantial alterations be made to the Respondent's family residence.

21. The Respondent states that as a result of the foregoing, he has limited financial means and is unable to pay additional amounts towards a fine or costs. The Respondent acknowledges that absent the factors described above, it would be appropriate for him to be subject to a penalty that includes a fine, due to the seriousness of the misconduct that is the subject of this Settlement Agreement.

22. 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.

23. There is no evidence of client loss resulting from the Respondent's conduct or lack of authorization.

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

25. 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

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 facts and 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.

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 15th day of July, 2019.

“Bertin Desjardins”

Bertin Desjardins

“JW”

Witness – Signature

JW

Witness – Print Name

“Shaun Devlin”

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



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: Bertin Desjardins

ORDER

WHEREAS on July 26, 2019, 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 Bertin Desjardins (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated July 15, 2019 (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 finds that the Respondent:

- a) between March 2014 and November 2016, obtained, possessed and, in some instances, used to process transactions, 51 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1; and
- b) between March 2014 and November 2016, altered 7 account forms in respect of two clients by using liquid correction fluid to alter information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

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

33. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 9 months commencing from the date of this Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

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

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

36. 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]