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: Branislav Robert Djekic

Heard: May 2, 2017 in Toronto, Ontario
Decision: May 2, 2017
Reasons for Decision: June 15, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth	Chair
Guenther W. K. Kleberg	Industry Representative

Appearances:

Paul Blasiak	)	Counsel for the Mutual Fund Dealers Association of Canada
Branislav Robert Djekic	)	Respondent appeared by conference call

BACKGROUND

1. By a News Release dated March 17, 2017, a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada ("MFDA") was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Panel should accept a settlement agreement, dated February 12, 2017 ("Settlement Agreement") entered into by the Staff of the MFDA and Branislav Robert Djekic ("Respondent").

2. At the outset of the proceedings, it was evident that the third Panel member had been unable to attend on the morning of the Hearing. Accordingly, after hearing submissions from Staff and from the Respondent, and with the concurrence of all parties, the Chair made an order that the Hearing continue with the two Panel members set out above.

3. Further, at the outset of the proceedings, the Panel considered a motion by Staff and the Respondent to move the proceedings "in camera". The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement aided by submissions as to the applicable law which should guide the Panel in determining whether to accept or reject the Settlement Agreement.

The Allegations

4. In the Settlement Agreement, the Respondent admits that:

a) On November 20, 2014, the Respondent falsified one client's signature on one account form, contrary to MFDA Rule 2.1.1; and

b) On November 24, 2014, the Respondent misled the Member when he falsely represented to his branch manager that a client had signed an account form, when he knew this to be incorrect, contrary to MFDA Rule 2.1.1.

The Facts

5. From August 8, 2003 to November 27, 2014, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Royal Mutual Fund Inc. ("Royal Mutual") a Member of the MFDA. On November 27, 2014, the Respondent was terminated as a result of the matters described herein.

6. The Respondent is not currently registered in the securities industry.

7. At all material times, the Respondent conducted business in the Windsor, Ontario area.

8. On November 13, 2014, the Respondent met with client CG in order to process a switch in client CG's account. The Respondent provided Royal Mutual with completed trade forms for processing and Royal Mutual processed the switch on November 14, 2014.

9. On November 20, 2014, the Respondent's branch manager met with the Respondent and advised him that he had failed to submit an Investor Profile Form in respect of the switch described above. The Respondent advised the branch manager that an Investor Profile Form had been completed and was signed by client CG on November 13, 2014. The Respondent and his branch manager were unable to locate the Investor Profile Form that the Respondent told the branch manager that client CG had previously signed.

10. Approximately one hour after the conclusion of the meeting with his branch manager on November 20, 2014, the Respondent submitted to his branch manager an Investor Profile Form containing the signature purportedly of client CG.

11. The Respondent falsified client CG's signature on the Investor Profile Form prior to submitting it to his branch manager.

12. The Respondent's branch manager reviewed Royal Mutual's electronic document management system and determined that the Investor Profile Form had been generated in the

approximately one hour period after the meeting between the Respondent and the branch manager on November 20, 2014, and not on November 13, 2014, as previously represented by the Respondent.

13. The Respondent's branch manager also observed that client CG's signature on the Investor Profile Form did not match the signature that was on file with Royal Mutual for client CG.

14. On November 24, 2014, the Respondent's branch manager met with the Respondent to discuss her observations described above in paragraphs 11, 12 and 13.

15. During the November 24, 2014 meeting, the Respondent falsely claimed that client CG had returned to the branch to sign the Investor Profile Form.

16. The Respondent states that he is impecunious and unable to pay any amount towards either a fine or costs.

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

18. The signature falsification that the Respondent made on the Investor Profile Form did not alter client CG's investment intentions and there was no client complaint.

19. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in this Settlement Agreement, beyond the commissions or fees that he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

20. 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.

Discussion

21. It is trite to say that the rules, regulations and policies of the MFDA are designed to preserve the integrity of its Members and to protect the public with whom they deal. It is, therefore, of the utmost importance that they be followed and that deficiencies identified as a result of MFDA audits or member investigations not only be corrected, but that this be done in a timely fashion.

22. The Panel was mindful that when determining whether it would be appropriate to accept a proposed settlement, MFDA hearing panels typically take into consideration whether the settlement:

(a) would be in the public interest and whether the penalty imposed will protect investors;
(b) is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
(c) addresses the issues of both specific and general deterrence;
(d) will prevent the type of conduct described in the Settlement Agreement from occurring again in the future; and
(e) will foster confidence in the integrity of the Canadian capital markets and the MFDA, and in the regulatory process itself.

> *Sterling Mutuals Inc. (Re),* 2016 LNCMFDA 77 at para13 (page 10) Reasons for Decision dated June 27, 2016 ["*Sterling Mutuals*"],

23. The Hearing Panel was also mindful of the words found in *Re Milewski* [1999] I.D.A.C.D. No. 17 decided on July 28, 1999. The panel in *Re Milewski* made the following comments at page 9:

> 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 a penalty determination 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 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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

24. The Panel felt that the admitted conduct was serious, however, we believed that the Settlement Agreement fairly addressed the concerns arising from the facts. The Panel further believed that in the circumstances of the facts set out above, the Settlement Agreement was within a reasonable range.

RESULT

25. For all of the above reasons, the Panel has concluded that the Settlement Agreement is reasonable. Accordingly, the following penalties are imposed upon the Respondent:

(a) The Respondent shall be prohibited for nine months from conducting securities business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;

(b) The Respondent shall in the future comply with MFDA Rule 2.1.1; and

(c) 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 15th day of June, 2017.

"Frederick W Chenoweth"

Frederick W Chenoweth
Chair

"Guenther W. K. Kleberg"

Guenther W. K. Kleberg
Industry Representative

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