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: Hugo Donais

Heard: December 11, 2019 in Vancouver, British Columbia
Decision: December 11, 2019
Reasons for Decision: January 20, 2020

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield	Chair
Susan Monk	Industry Representative
Cecilia Wong	Industry Representative

Appearances:

Justin Dunphy	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Hugo Donais	)	Respondent, by teleconference

1. On December 11, 2019, the Hearing Panel approved a Settlement Agreement dated November 27, 2019 ("Settlement Agreement"), between the Mutual Fund Dealers Association of Canada ("MFDA") and Hugo Donais (the "Respondent"). The settlement arose in relation to the Respondent's contravention of MFDA Bylaws and Rules, namely: the unauthorized alteration of 18 account forms in relation to 14 clients; and the procurement, possession and use of 30 pre-signed account forms in respect of 22 clients.

2. The Order provides that 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 three months from December 11, 2019; shall pay a fine in the amount of $2,500; and shall pay costs of $2,500. The Order stipulates that the fine and costs will be paid as to $1,500 forthwith, and as to the remainder in six monthly instalments commencing January 31, 2020.

Agreed Facts

3. The facts are set forth in the Settlement Agreement. From March 2008 until April 2017, the Respondent was registered in British Columbia as a mutual fund salesperson, now known as a dealing representative, with Sun Life Financial Investment Services (Canada) Inc., a member of the MFDA. The Respondent carried on business in the Victoria, British Columbia area. The Respondent's employment with Sun Life was terminated on March 9, 2017, for reasons unrelated to this matter.

4. Sun Life identified the pre-signed account forms in April 2017 as the Respondent's files were being reassigned. A subsequent audit of all of the Respondent's files identified all the files that are the subject of this proceeding.

5. The audit identified 18 altered account forms in respect of 14 clients. The unauthorized alterations consisted of one account linking agreement form: two account application forms; one fee agreement form; one identity verification form; one Know-Your-Client ("KYC") form; three order tickets; two Canada Revenue Agency direct transfer forms; and six transfer authorization forms. In 16 of the 18 instances, the Respondent or his assistants submitted the altered forms to the member for processing.

6. Thirty pre-signed account forms were identified in relation to 22 clients, namely: eight account application forms; one private managed assets program account information form; one dealer change form; one identity verification form; one KYC form; four order tickets; one pre-authorized chequing form; one signature for electronic application form; one CRA direct transfer form; and 11 transfer authorization forms.

7. Inquiries of clients confirmed that the use of the forms and the alterations thereof had not been authorized. None of the clients reported any concerns with the changes that had been made without authorization. The Respondent says he acted as he did as a matter of convenience. There is no evidence of any loss to any client, nor of any benefit to the Respondent above and beyond the commissions he earned on any of the transactions in question.

8. In July 2018 the Respondent was the subject of a decision of the Insurance Council of British Columbia in relation to the use of the forms here in issue. He was fined $1,000, ordered to pay costs of $1,512.50, and ordered to complete an insurance industry course, which he did.

9. MFDA staff were provided with particulars of the Respondent's current income level and the time payment plan was the result. Finally, it should be noted that the Respondent has not been the subject of any other MFDA disciplinary proceedings.

Analysis

10. It is well known that the use of pre-signed forms and the falsification of signatures constitutes a violation of MFDA Rule 2.1.1 that prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each member and approved person deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. Hearing panels have continually held that obtaining or using pre-signed account forms and the falsification of signatures are contraventions of the standard of conduct demanded under MFDA Rule 2.1.1.

11. Conduct of the kind in question is prohibited because it may adversely affect the integrity and reliability of documents; destroy the audit trail; impact the ability of approved persons to produce valid documentation to support transactions that come into question; mislead a member's

supervisory personnel; negatively affect the credibility of the dealing representative; negatively affect member complaint handling; and facilitate other misconduct such as unauthorized trading, fraud and the misappropriation of funds: see MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017) regarding pre-signed forms; and MFDA Bulletin #0661 dated October 15, 2015, regarding the falsification of signatures. The prohibitions apply whether or not the client was aware of, or authorized the use of, the forms or falsification of a signature and whether or not the forms were actually used by the approved person for discretionary trading or other improper purposes.

12. The accepted principle is that a hearing panel will not reject a settlement agreement unless the proposed penalty falls outside the reasonable range of appropriateness. Settlements advance the MFDA's regulatory objective of protecting the public by proscribing activities that are harmful to the public while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent: see *Re Sterling Mutuals Inc.,* MFDA File No. 200820, August 21, 2008, Ontario Regional Council, and *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484, at para. 31.

13. When considering whether a settlement falls within the reasonable range of appropriateness the Panel will consider criteria identified in other cases, namely, whether the settlement is in the public interest and the penalty imposed will protect investors; whether the settlement is reasonable and proportionate having regard for the Respondent's conduct; whether the settlement addresses the issues of specific and general deterrence; whether the settlement will prevent recurrence of the type of conduct in question; and whether the settlement will foster confidence in the integrity of the MFDA and the regulatory process itself: see *Re: Jacobson*, 2007 MFDA 27, p. 9.

14. With regard to the penalty itself, the assessment of reasonableness will take into account a number of factors including the seriousness of the allegations; the Respondent's past conduct; whether the Respondent recognizes the seriousness of the improper activity; the benefits derived from the improper activity; the risk to investors and the capital markets should the Respondent continue to participate in the mutual fund industry; the damage to the integrity of the capital markets occasioned by the Respondent's conduct; the need for specific and general deterrence; and prior decisions in comparable circumstances.

15. In this instance, counsel cites four comparables: *Re: Fu*, MFDA File No. 201898, February 7, 2019, Central Regional Council, imposing a fine of $12,500 and costs of $2,500 for the possession and use of 15 pre-signed forms and the alteration of 17 account forms; *Re: Dick*, MFDA File No. 201818, July 20, 2018, Central Regional Council, imposing a fine of $15,000 and costs of $2,500 for the possession and use of 44 pre-signed forms, and the alteration of 7 account forms; *Re: Peters,* MFDA File No. 201743, December 8, 2017, Central Regional Council, imposing a fine of $12,000 and costs of $2,500 for the possession and use of 14 altered forms and the possession of 29 pre-signed account forms; and *Re: Montina,* MFDA File No. 201954, Prairie Regional Council, imposing a fine of $14,500 and costs of $2,500 for the alteration of 14 forms and the possession of 29 pre-signed account forms. In none of the foregoing instances was any period of prohibition from participation in the industry imposed.

16. The decisions cited by counsel all imposed significantly higher financial penalties than those imposed in this instance by settlement agreement. MFDA counsel explains the departure by reference to the Respondent's current economic circumstances and the additional penalty imposed on the Respondent by the Insurance Council of British Columbia. The three-month prohibition is an added consideration that cannot be ignored.

17. The Panel considers the penalty in this case to mark the bottom of the range of reasonableness. That said, the Panel has concluded, that it should accept the result reflected in the settlement agreement. It is not clear from the settlement agreement or anything said by the Respondent that he aspires to a return to the industry. Nonetheless, the period of prohibition is a factor to consider in assessing reasonableness. The Panel is not convinced that ability to pay should be a factor in determining an appropriate quantum of penalty. Rather, economic circumstances are better reflected in considering time to pay. Penalties imposed that are external to the MFDA process are relevant when assessing the reasonableness of the terms of settlement.

18. Transgressions of the kind here in question are all too common in the mutual fund industry. The principal consideration must be deterrence, both specific to the Respondent, and general to participants in the mutual fund industry as a whole. Having regard for all of the circumstances, the Settlement Agreement serves that purpose and it is therefore approved.

DATED this 20th day of January, 2020.

"Ian H. Pitfield"
Ian H. Pitfield
Chair

"Susan Monk"
Susan Monk
Industry Representative

"Cecilia Wong"
Cecilia Wong
Industry Representative

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