



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: Andrew Leonard Doyle

Heard: December 15, 2016 in Toronto, Ontario

Decision: December 15, 2016

Reasons for Decision: March 16, 2017

**REASONS FOR DECISION FOR ACCEPTANCE OF
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Brigitte Geisler

Kenneth Mann

Chair

Industry Representative

Industry Representative

Appearances:

Sarah Glickman

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Counsel for the Mutual Fund Dealers
Association of Canada

Suzanne Kittell

Counsel for the Respondent

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated July 27, 2016 (the “Settlement Agreement”) between the staff of the MFDA and Andrew Leonard Doyle (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:

- a) between September 2009 and March 2015, he, or his assistants, for whom he was responsible, altered, and in some instances, used to process transactions, 60 account forms by altering information on the account forms without obtaining client initials authorizing the alterations, contrary to MFDA Rule 2.1.1; and
- b) between September 2009 and March 2015, he, or his assistants, for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 65 pre-signed account forms, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were that the Respondent will pay a fine of \$17,500 and costs of \$2,500.

4. In addition, on August 18, 2015, the Respondent’s Member placed him under close supervision for 24 months and required that he complete the Conduct and Practices Handbook course offered by the Canadian Securities Institute, which he did.

Considerations

5. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, 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 contraventions 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.

Altering forms

6. Hearing Panels have held that altering forms is a contravention of the standard of conduct as set out in 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,

Ewart (Re), [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201528, Panel Decision dated September 11, 2015.

Pre-signed account forms

7. 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] *supra*

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

8. There was no evidence of client harm or lack of client authorization.
9. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct, other than the commissions and fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
10. The Respondent has been registered in the mutual fund industry since 2009.
11. The Respondent has not previously been subject to MFDA disciplinary proceedings.
12. 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.

Penalty guidelines

13. Where an Approved Person fails to adhere to the standard of conduct, the MFDA Penalty Guidelines recommend one or all of the following: a minimum fine of \$5,000; writing or re-writing an appropriate industry course; suspension; and/or a permanent prohibition in egregious cases.
14. The agreed fine of \$17,500 (for the two counts of contravention) is greater than the suggested minimum fines set out in the MFDA Penalty Guidelines, but not inappropriately so.

Previous decisions

15. The agreed penalties are within the reasonable range of appropriateness with regard to other decisions made by MFDA hearing panels in similar circumstances.

Deterrence

16. The fine and costs are significant and send a message to the Respondent and others in the capital markets about the seriousness of the misconduct at issue.

Fair and reasonable

17. 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 are represented by counsel and have the means to undergo a contested hearing but have reached a settlement, it is unlikely that a panel would ever determine that the results were not fair and reasonable. We determined that they were fair and reasonable.

Costs

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

Conclusion

19. 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 16th day of March, 2017.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Brigitte Geisler”

Brigitte Geisler
Industry Representative

“Kenneth Mann”

Kenneth Mann
Industry Representative

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**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: Andrew Leonard Doyle

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Andrew Leonard Doyle (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 MFDA:

- a) between September 2009 and March 2015, the Respondent, or his assistants, for whom he was responsible, altered, and in some instances, used to process transactions, 60 account forms by altering information on the account forms without obtaining client initials authorizing the alterations, contrary to MFDA Rule 2.1.1; and
- b) between September 2009 and March 2015, the Respondent, or his assistants, for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 65 pre-signed account forms, 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 \$17,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 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. Since 2009, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Niagara Falls, Ontario area.

9. At all material times, the Respondent operated his business employing one or more assistants. From February 2008 onwards, at least one of the assistants was registered in Ontario as a mutual fund salesperson.

10. The Respondent was responsible for ensuring that any work he delegated to the assistants, including completing of account forms with client information, which the assistants then submitted to Sun Life for processing, was compliant with Sun Life and the MFDA’s policies, procedures, rules, and directions.

Altered Account Forms

11. Between September 2009 and March 2015, the Respondent, or his assistants, altered, and in some instances, used to process transactions, 60 account forms by altering information account form without obtaining client initials authorizing the alterations.

12. These altered forms included Pre-Authorized Contribution forms, Order forms, and New Account Application forms.

13. In the instances where one of the Respondent’s assistants altered the account form, the Respondent knew or ought to have known that the account forms were altered.

Pre-Signed Account Forms

14. Between September 2009 and March 2015, the Respondent, or his assistants, obtained, possessed, and in some instances, used to process transactions, 65 pre-signed account forms.

15. These pre-signed account forms included Pre-Authorized Contribution forms, Order forms, and New Account Application forms.

16. In the instances where one of the Respondent's assistants obtained the pre-signed account forms, the Respondent knew or ought to have known that the account forms were pre-signed.

Sun Life's Investigation

17. Sun Life's compliance staff detected the conduct that is the subject of this Settlement Agreement during a supervisory review on February 11, 2015 and subsequent follow-up investigation.

18. Sun Life identified the conduct involving the forms described above across 76 client files.

19. As part of its investigation, Sun Life sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading. There is no evidence of any client concerns in response to these letters.

20. On August 18, 2015, Sun Life placed the Respondent under close supervision for a period of 24 months and required that the Respondent complete the Conduct and Practices Handbook course offered by the Canadian Securities Institute, which the Respondent completed.

Additional Factors

21. 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.
22. There is no evidence of client harm or lack of client authorization.
23. The Respondent has not previously been the subject of MFDA proceedings.
24. The Respondent cooperated with Sun Life's investigation into his conduct.
25. The Respondent has expressed remorse for his conduct.
26. 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

27. 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.
28. 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.
29. 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.

30. 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.

31. 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.

32. 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.

33. 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 27th day of July 2016.

“Andrew Leonard Doyle”
Andrew Leonard Doyle

“MA-C”
Witness – Signature

MA-C
Witness – Print Name

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

Schedule “A”

Order

File No. 201651



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**IN THE MATTER OF A SETTLEMENT HEARING
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Re: Andrew Leonard Doyle

ORDER

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 [Respondent] (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 September 2009 and March 2015, the Respondent, or his assistants, for whom he was responsible, altered and in some instances, used to process transactions, 60 account forms by altering information on the account forms without obtaining client initials authorizing the alterations and, obtained, possessed, and in

some instances, used to process transactions, 65 pre-signed account forms, contrary to MFDA Rule 2.1.1.

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 \$17,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- 2) The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- 3) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
- 4) 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]