



**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: Annaji Kumar**

Heard: April 27, 2017 in Toronto, Ontario

Decision: April 27, 2017

Reasons for Decision: June 7, 2017

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Chair

Robert C. White

Industry Representative

Joseph Yassi

Industry Representative

Appearances:

Sarah Glickman

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Counsel for the Mutual Fund Dealers

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Association of Canada

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Annaji Kumar

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Respondent, In Person

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## **Settlement Agreement**

1. The Hearing Panel accepted the settlement agreement dated December 14, 2016 (the “Settlement Agreement”) between the staff of the MFDA and Annaji Kumar (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 Settlement Agreement.

## **Contraventions**

2. The Respondent admitted that:
- a) on or about June 19, 2015, the Respondent falsified a client signature on an account form, contrary to MFDA Rule 2.1.1;
  - b) between 2004 and June 19, 2015, the Respondent falsified and used to process transactions, 2 account forms in respect of 2 clients, by altering information on the account forms without obtaining client initials authorizing the alterations, contrary to MFDA Rule 2.1.1;
  - c) between 2004 and June 2015, the Respondent obtained, possessed, and used to process transactions, 2 pre-signed account forms in respect of 2 clients, contrary to MFDA Rule 2.1.1; and
  - d) between October 2009 and June 2015, the Respondent, acting in his capacity as branch manager, reviewed and approved the use of an account form containing a falsified client signature, a falsified account form, and a pre-signed account form, contrary to MFDA Rules 2.5.5(f) and 2.1.1.

## **Agreed penalties**

3. The agreed penalties were: i) a 6 month prohibition from conducting securities related business in any capacity; ii) an order that prior to being re-designated as a branch manager, the Respondent shall first successfully complete the branch manager course offered by either the

Canadian Securities Institute or the Investment Funds Institute of Canada; and iii) a costs award of \$1,500.

### **Considerations**

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

### **Nature of the Misconduct**

5. The possession and/or use of pre-signed account forms is a serious breach of MFDA Rule 2.1.1.

6. The falsification of a client's signature is a serious breach of MFDA Rule 2.1.1.

7. The review and approval of pre-signed or falsified account forms by a branch manager, even where the forms were used by himself and no one else to process transactions, is a separate violation of MFDA Rules 2.5.5(f) and 2.1.1.

### **Other considerations in determining acceptability of agreed penalty**

8. There was no evidence of client loss, nor evidence that any of the transactions in question were unauthorized.

9. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct above and beyond the commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
10. The Respondent's employment was terminated by his Member and he is no longer registered in the securities industry in any capacity.
11. The Respondent has not previously been subject to MFDA disciplinary proceedings.
12. The Respondent stated that he is impecunious and unable to pay any additional amounts towards either fine or costs.
13. The agreed penalty is significant and helps the MFDA to send a message to the respondent and others in the capital markets about the seriousness of the misconduct.
14. 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.
15. The MFDA penalty guidelines recommend one or more of the following sanctions where a person fails to adhere to the standard of conduct set out in the rules: a minimum fine of \$5,000; writing or re-writing an appropriate industry course; suspension; a permanent prohibition in egregious cases.
16. In addition, the penalty guidelines for a person who fails to meet his or her supervisory responsibilities recommend one or more of the following: a minimum fine of \$10,000; writing or rewriting an appropriate industry course; conditions on registration or suspension; a permanent prohibition in egregious cases.
17. The guidelines are not mandatory but are intended to assist Hearing Panels, MFDA staff and respondents in considering the appropriate penalties in MFDA disciplinary proceedings.

18. Furthermore, it is appropriate for a Hearing Panel, in assessing the deterrent impact that a penalty will have on a respondent, to take into consideration the particular circumstances of the respondent, which we did in this case.

19. The agreed penalty is within the reasonable range of appropriateness with regard to other decisions, submitted to us by staff, made by MFDA hearing panels in similar circumstances.

### **Conclusion**

20. We concluded that the agreed penalty was within an acceptable range based on precedents, would serve as a specific and general deterrent, and was fair and reasonable. We considered the costs award to be reasonable in the circumstances. We concluded, therefore, that the Settlement Agreement was in the public interest and, consequently, we accepted it.

**DATED** this 7<sup>th</sup> day of June, 2017.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Robert C. White”

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Robert C. White  
Industry Representative

“Joseph Yassi”

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Joseph Yassi  
Industry Representative



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**Re: Annaji Kumar**

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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, Annaji Kumar (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) on or about June 19, 2015, the Respondent falsified a client signature on an account form, contrary to MFDA Rule 2.1.1;
- b) between 2004 and June 2015, the Respondent falsified and used to process transactions, 2 account forms in respect of 2 clients, by altering information on the account forms without obtaining client initials authorizing the alterations, contrary to MFDA Rule 2.1.1;
- c) between 2004 and June 2015, the Respondent obtained, possessed, and used to process transactions, 2 pre-signed account forms in respect of 2 clients, contrary to MFDA Rule 2.1.1; and
- d) between October 2009 and June 2015, acting in his capacity as branch manager, the Respondent reviewed and approved the use of an account form containing a falsified client signature, a falsified account form, and a pre-signed account form, contrary to MFDA Rules 2.5.5(f)<sup>1</sup> and 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 the employ of or associated with a Member of the MFDA for a period of 6 months, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$1,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) prior to being re-designated as a branch manager, the Respondent shall first successfully complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada, pursuant to 24.1.1(f) of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.5.5(f); and

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<sup>1</sup> Prior to September 2013, the Respondent's conduct violated MFDA Rule 2.5.5(d).

- e) 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. Between September 2004 and November 2015, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with PFSL Investments Canada Inc. (“PFSL”), a Member of the MFDA.
8. At all material times, the Respondent conducted business in the Burlington, Ontario area.
9. On November 4, 2015, PFSL terminated the Respondent as a result of the conduct set out in this settlement agreement. The Respondent is no longer registered in the securities industry in any capacity.

#### **Falsifying a Client Signature**

10. On or around June 25, 2015, the Respondent falsified the signature of client MC on a redemption request form by cutting the client signature from a previously signed account form and pasting that signature onto a redemption request form. The Respondent then submitted to PFSL the redemption request form for processing.
11. The Respondent states that he falsified client MC’s signature because client MC could not attend at the branch to sign the account form.

### **Falsified Account Forms**

12. Between 2004 and June 2015, the Respondent falsified and used to process transactions, 2 account forms in respect of 2 clients, by altering information on the account forms without obtaining client initials authorizing the alterations.

13. The falsified account forms consisted of a redemption request form and an exchange request form.

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

14. Between 2004 and June 2015, the Respondent, obtained, possessed, and used to process transactions, 2 pre-signed account forms in respect of 2 clients.

15. The pre-signed account forms consisted of a redemption request form and a customer service request form.

### **Approval of Account Forms**

16. Between October 2009 and June 2015, acting in his capacity as branch manager, the Respondent reviewed and approved the use of three of the account forms as set out above: one account form containing a falsified client signature, one falsified account form, and one pre-signed account form.

### **PFSL's Investigation**

17. On or about September 10, 2015, PFSL's compliance staff detected the conduct that is the subject of this Settlement Agreement during a branch audit and the subsequent follow up review.

18. As part of its investigation, PFSL reviewed all the Respondent's client files and sent letters to the clients in whose client files the account forms described above were identified, as well as to 10% of all the clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns to PFSL.

19. On November 4, 2015, PFSL terminated the Respondent.

### **Additional Factors**

20. 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.

21. There is no evidence of client loss or lack of authorization.

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

23. The Respondent states that he is impecunious and unable to pay any additional amounts towards either fine or costs.

24. 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.

### **ADDITIONAL TERMS OF SETTLEMENT**

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 14<sup>th</sup> day of December, 2016.

“Annaji Kumar”

\_\_\_\_\_  
Annaji Kumar

“NC”

\_\_\_\_\_  
Witness – Signature

NC

\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”

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

**Schedule “A”**

**Order**

**File No. 2016111**



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**Re: Annaji Kumar**

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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 [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:

- a) on or about June 19, 2015, the Respondent falsified a client signature on an account form, contrary to MFDA Rule 2.1.1;

- b) between 2004 and June 2015, the Respondent falsified and used to process transactions, 2 account forms in respect of 2 clients, by altering information on the account form without obtaining client initials authorizing the alterations, contrary to MFDA Rule 2.1.1;
- c) between 2004 and June 2015, the Respondent, obtained, possessed, and used to process transactions, 2 pre-signed account forms in respect of 2 clients, contrary to MFDA Rule 2.1.1; and
- d) between October 2009 and June 2015, acting in his capacity as branch manager, the Respondent reviewed and approved the use of an account form containing a falsified client signature, a falsified account form and a pre-signed account form.

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

1. The Respondent shall be prohibited from conducting securities related business in the employ of or associated with a Member of the MFDA for a period of 6 months, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$1,500 pursuant to s. 24.2 of MFDA By-law No. 1;
3. Prior to being re-designated as a branch manager, the Respondent shall first successfully complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada, pursuant to 24.1.1(f) of MFDA By-law No. 1;
4. The Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.5.5(f); and
5. 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]