



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: Michael Edmund Duhan

Heard: December 15, 2015, in Halifax, Nova Scotia
Reasons for Decision: February 22, 2016

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

The Hon. D. Merlin Nunn, Q.C.	Chair
Susan Nixon	Industry Representative
John R. Maguire	Industry Representative

Appearances:

Paul Blasiak)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Joseph Burke)	Counsel for the Respondent
)	
)	

1. Initially the Hearing Panel followed the usual practice regarding settlement hearings of sitting *in camera* until its decision is made and if the settlement agreement is accepted the hearing is then open to the public. In the present matter, there was a media person in attendance who left the hearing room, and when the matter was decided this person returned to the hearing room.
2. The settlement agreement itself is attached to this decision as Schedule “1”.
3. A short summary of the facts sufficiently reveals the significant matters leading to the settlement agreement and the Hearing Panel’s considerations of it.
4. The Respondent has been registered in the mutual fund industry since 1988, worked in a number of provinces and at all material times to this matter he conducted business for Investors Group in Dartmouth, Nova Scotia.
5. Between the years 2005 and 2014, the Respondent obtained and maintained eight (8) blank pre-signed account forms in respect of five (5) clients. The pre-signed account forms included Transfer Authorization Forms, Investment Instructions Forms, a Direct Transfer of RRSP Form and a Direct Transfer Request Form.
6. This came to light during a compliance audit conducted by Investors Group compliance staff conducted on February 13, 2014 with a follow-up compliance audit conducted on March 14, 2014, the two of which included a review of all the files maintained by the Respondent.
7. On May 20, 2014 Investors Group sent a warning letter to the Respondent regarding his conduct with respect to the maintaining of pre-signed forms.
8. MFDA staff conducted an investigation of the Respondent’s activities and determined that this activity violated MFDA Rule 2.1.1 (Standard of Conduct) and could lead to

consideration of Section 24.1.1 of MFDA By-law No. 1 (Penalties), 24.2 and 24.4 of the same By-law respecting Costs and Settlements.

9. Following this, MFDA staff and the Respondent agreed to settle the matters at issue and the Settlement Agreement was entered into and agreed to by both the MFDA and the Respondent and, pursuant to section 24.4 of By-law No. 1, the MFDA gave notice that a hearing was proposed to determine if the Settlement Agreement reached by the parties should be accepted.

10. The hearing was held December 15, 2015.

11. The role of a Hearing Panel at the settlement hearing is fundamentally different from its role in a contested hearing. A panel has only two choices: accept or reject. In a number of past cases MFDA Hearing Panels have established the purpose of the Hearing Panel is to determine whether the proposed Settlement Agreement and the penalties agreed to are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by its Members and Approved Persons.

12. MFDA Rule 2.1.1 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.

13. “Pre-signed account forms” is a generic term which applies to a variety of situations where an Approved Person seeks to rely on a client’s signature on a document when the signature was not provided by the client at the time the document was completed. Most commonly, an Approved Person obtains a client’s signature on a partially or completely blank account form.

“Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading. ...At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client... Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client’s signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.”

Price (Re), MFDA File No. 200814.

14. As well, MFDA Staff Notice 0066 provided to all Members and Approved Persons (which the Respondent was) dated October 31, 2007 and updated March 4, 2013, clearly stated that obtaining pre-signed forms from clients is contrary to the obligation under MFDA Rule 2.1.1 (Standard of Conduct) to deal fairly, honestly and in good faith with their clients and observe high standards of ethics in the transaction of business.

15. Therefore there can be no doubt that obtaining pre-signed forms is a serious matter in the mutual fund industry and is detrimental to the public interest. The Respondent has breached MFDA Rule 2.1.1.

16. Having made that determination the Panel is referred to a number of cases which indicate the type of considerations that the Hearing Panel should take into account in determining whether a proposed settlement agreement should be accepted. These are:

- (a) whether acceptance of the settlement agreement would be in the public interest and whether the penalties imposed will protect investors;
- (b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- (c) whether the settlement agreement addresses the issue of both specific and general deterrence;
- (d) whether the proposed settlement agreement will prevent the type of conduct described in the settlement agreement from occurring again in the future;

- (e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- (f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- (g) whether the settlement agreement will foster confidence in the regulatory process itself.

Investors Group Financial Services (2005) MFDA Ontario Regional Council, File No. 200401 at pp. 2-4.

Zollo (2007) MFDA Ontario Regional Council, File No. 200610 at pp. 2-3.

17. The Panel has considered all these factors and is satisfied that this settlement agreement satisfies each of these considerations.

18. Additionally the Panel must consider the penalty aspect of the settlement agreement which in this case requires the Respondent to pay a fine in the amount of \$2,500 and pay costs in the amount of \$1,500.

19. There are mitigating circumstances which the Panel has factored into its reasons to approve the settlement. These were provided by MFDA counsel at the hearing:

- (a) the Respondent's long years of service and his continuing in the industry;
- (b) the Respondent has not previously been the subject of MFDA disciplinary proceedings;
- (c) no clients have complained about his conduct;
- (d) there is no evidence that the Respondent received any financial benefit from his conduct regarding pre-signed forms;
- (e) the Respondent cooperated with Investors Group's internal investigation into his conduct and has provided a written statement to Investors Group confirming that he no longer accepts blank signed account forms from clients.

(f) by entering the settlement the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing on the allegations.

20. Acknowledging that obtaining pre-signed blank forms is a serious breach of the standard of conduct required of those engaged in the mutual fund industry, the Panel is satisfied that the penalty agreed upon in this case of \$2,500 in fines and \$1,500 in costs is appropriate to impress upon the Respondent the seriousness of his conduct and deter him from further conduct breaching the MFDA rules applicable to the mutual fund industry. As well, the Panel is of the opinion that the also is sufficient to constitute a general deterrence to others engaged in the industry. The penalty agreed to in this case falls within “the reasonable range of appropriateness standard.”

21. The Panel also considered and decided that the proposed settlement agreement and penalties are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by its Members and Approved Persons.

22. Therefore the Panel accepts the settlement agreement.

DATED this 22nd day of February, 2016.

“D. Merlin Nunn”

The Hon D. Merlin Nunn, Q.C.
Chair

“Susan Nixon”

Susan Nixon
Industry Representative

“John R. Maguire”

John R. Maguire
Industry Representative



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: Michael Edmund Duhan

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Atlantic Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Michael Edmund Duhan.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in 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.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this 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.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. The Respondent has been registered in the mutual fund industry since 1988.

7. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA, in Nova Scotia since July 7, 1988, New Brunswick since May 3, 2007 and Ontario since May 13, 2004. The Respondent was previously registered with Investors Group in British Columbia, Prince Edward Island and Quebec.

8. At all material times, the Respondent conducted business in Dartmouth, Nova Scotia.

Blank Pre-Signed Account Forms

9. At all material times, Investors Group's policies and procedures prohibited its Approved Persons, including the Respondent, from using pre-signed account forms.

10. Between 2005 and 2014, the Respondent obtained and maintained 8 blank pre-signed account forms in respect of 5 clients. The blank pre-signed account forms included Transfer Authorization Forms, Investment Instructions Forms, a Direct Transfer of RRSP Form and a Direct Transfer Request Form.

11. Investors Group compliance staff detected the conduct that is the subject of this Settlement Agreement during a compliance audit conducted on February 13, 2014 which included a review of 25 client files maintained by the Respondent, and a follow-up compliance audit conducted on March 14, 2014 which included a review of all of the remaining client files maintained by the Respondent.

12. On May 20, 2014, Investors Group sent a warning letter to the Respondent regarding the conduct described above.

Additional Factors

13. The Respondent has provided a written statement to Investors Group confirming that he no longer accepts blank signed account forms from clients.

14. No clients serviced by the Respondent have complained about his conduct.

15. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above.

16. The Respondent cooperated with Investors Group's internal investigation into his conduct.

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

18. 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.

V. CONTRAVENTIONS

19. The Respondent admits that, between 2005 and 2014, he obtained and maintained 8 blank pre-signed account forms in respect of 5 clients, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

20. The Respondent agrees to the following terms of settlement:

- (a) the Respondent shall pay a fine in the amount of \$2,500 pursuant to s. 24.1.1(b) 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) 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.

VII. STAFF COMMITMENT

21. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. 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 Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether

known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

22. Acceptance of this Settlement Agreement shall be sought at a hearing of the Atlantic Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

23. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his 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.

24. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then 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.

25. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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 him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

26. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement,

as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

27. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made 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 this Settlement Agreement or the settlement negotiations.

28. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

29. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

30. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

31. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

32. A facsimile copy of any signature shall be effective as an original signature

DATED this 5th day of August, 2015.

“Joseph Burke”
Counsel for Michael Edmund Duhan

Michael Edmund Duhan

“Charlene Arsenault”

Witness – Signature

Charlene Arsenault

Witness – Print Name

“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: Michael Edmund Duhan

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 Michael Edmund Duhan (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 2005 and 2014, the Respondent obtained and maintained 8 blank pre-signed account forms in respect of 5 clients, 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 \$2,500 pursuant to s. 24.1.1(b) 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. 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]