



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: Leslie Marie Gilchrist

Heard: May 15, 2017 in Vancouver, British Columbia

Decision: May 15, 2017

Reasons for Decision: May 29, 2017

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield

Bob Sokugawa

David Webb

Chair

Industry Representative

Industry Representative

Appearances:

Christopher Corsetti

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Counsel for the Mutual Fund Dealers

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Association of Canada

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Mark Skorah

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Counsel for the Respondent

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Leslie Marie Gilchrist

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Respondent, by teleconference

Introduction

1. On May 15, 2017, we approved a Settlement Agreement concluded on December 18, 2016 between the Mutual Fund Dealers Association of Canada (“MFDA”) and Leslie Marie Gilchrist (“Respondent”) after hearing submissions from counsel on behalf of the MFDA and the Respondent.

2. The Order we granted provides that:
 - a) The Respondent shall be prohibited from acting in the capacity as a branch manager or supervisor while in the employ of or associated with any Member of the MFDA for a period of 5 years commencing from the date of the Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
 - b) The Respondent shall successfully complete the Branch Manager Course offered by the Canadian Securities Institute prior to being re-designated as a branch manager or supervisor in the future;
 - c) The Respondent shall pay a fine in the amount of \$7,500, pursuant to section 24.1(b) of By-law No. 1;
 - d) The Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1;
 - e) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - f) 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*.

Agreed Facts

3. The agreed facts upon which the Settlement Agreement was based are the following.

4. The Respondent has been registered as a dealing representative in British Columbia and Alberta since May 1, 2002 and September 28, 2009, respectively, with IPC Investment Corporation (IPC), a Member of the MFDA. She was registered as a branch manager in British Columbia from March 14, 2003 to July 10, 2009, and from December 30, 2010 to December 7, 2015. She carries on business under the trade name Gilchrist Financial Services in and around Prince George, British Columbia.

5. IPC's policies and procedures prohibited its approved persons from conducting business using blank or partially complete pre-signed account forms, including photocopies of pre-signed forms. Between March 2014 and May 2015, the Respondent obtained, possessed, and used to process transactions, 3 pre-signed account forms in respect of 2 clients. The pre-signed forms consisted of Know Your Client Update forms. The Respondent added clients' risk tolerance and investment objective information after the clients had signed the account forms.

6. The Respondent had used pre-signed forms on prior occasions. In 2007, an IPC branch audit identified at least 4 pre-signed account forms in the Respondent's client files. All of these clients were previous clients of the Respondent's father, Bruce Gilchrist, from whom the Respondent had recently taken over the files. The Respondent confirmed she would not use pre-signed forms in the future.

7. In 2009, an IPC branch audit identified 2 pre-signed account forms in the Respondent's client files. IPC cautioned the Respondent and she confirmed her understanding that pre-signed forms were prohibited.

8. In none of the prior instances was there harm to a client, a complaint by clients, or financial benefit to the Respondent.

9. On May 17, 2015, IPC identified the pre-signed forms that are the subject of this proceeding. On September 1, 2015, IPC issued a Compliance Notice to the Respondent in relation to these pre-signed forms. The notice warned the Respondent not to use pre-signed forms and placed the Respondent on close supervision for a period of 6 months.

10. By way of mitigation, the parties note that the Respondent has not previously been disciplined by the MFDA and there is no evidence that the Respondent processed any trades or changes to client information without the knowledge or authorization of her clients; that clients suffered any financial harm as a result of the maintenance or use of the pre-signed forms; that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which she would ordinarily have been entitled had the transactions in the clients' accounts been carried out in the proper manner; or that any clients have complained about the Respondent's conduct.

Panel Analysis

11. The Panel recognizes that it must accept or reject a Settlement Agreement in its entirety. It is well established that a Settlement Agreement should be approved if the sanctions imposed fall within the range of reason having regard for all of the relevant circumstances. The Panel is not permitted to amend the Settlement Agreement should it be of the view that some other penalty would be more appropriate. Specifically, the Panel recognizes that it should respect the reasoning in *Re: Jacobson*, 2007 MFDA 27, July 13, 2007, Prairie Regional Council. In that case, a panel stated that hearing panels have taken into account the following considerations when determining if a proposed settlement should be accepted, namely:

Whether:

- a) acceptance of the Settlement Agreement would be in the public interest and whether the penalties imposed will protect investors;
- b) the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;

- c) the Settlement Agreement addresses the issues of both specific and general deterrence;
- d) the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- e) the Settlement Agreement will foster confidence in the integrity of the Canadian Capital Markets; and
- f) the Settlement Agreement will foster confidence in the integrity of the MFDA.

12. The use of a Settlement Agreement to reflect a negotiated settlement should be encouraged provided the penalties set forth in the agreement “strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets, and prevention of a repetition of the offense”: *Re: Kelvin Donald Byce*, MFDA File No. 201311, September 4, 2013, Central Regional Council, para.5; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.), paras. 59 and 86.

13. In this case, there having been no complaints from or financial loss to clients, and no abnormal financial gain to the Respondent, the relevant factors in assessing the appropriateness of the penalty to be imposed by settlement are the seriousness of the misconduct; the Respondent’s past conduct; the Respondent’s experience and level of activity in the capital markets; whether the Respondent recognizes the seriousness of the improper activity; the risk to investors and the capital markets in the Prince George area should the Respondent continue to operate in the area; the damage caused by the conduct to the integrity of the capital markets; the need for specific and general deterrence; the need to alert others to the consequences of inappropriate activities by those who operate in the capital markets; and previous decisions in similar circumstances: see *Headley (Re)*, 2006 MFDA 3, at pps. 25-26.

14. The seriousness of the misconduct cannot be denied. The Respondent, a dealing representative since 1999 and a branch manager at the time of the misconduct, had engaged in similar misconduct on two prior occasions. Warnings and commitments to refrain from using pre-signed forms were of no effect.

15. The MFDA has been diligent in its efforts to ensure that pre-signed forms are not used by approved persons and for good reason. As stated by counsel for the MFDA, the use of pre-signed forms can have serious consequences by adversely affecting the integrity and reliability of documents; destroying the audit trail; adversely affecting the ability of approved persons to produce valid documentation to support transactions that may be questioned; misleading Member supervisory personnel; negatively affecting the credibility of the approved person; negatively affecting Member complaint handling; and facilitating other misconduct such as unauthorized trading, fraud and the misappropriation of funds.

16. Despite MFDA diligence, the use of pre-signed forms appears to be an ongoing and common form of misconduct frequently the subject of consideration by hearing panels. The panel queries whether penalties imposed by settlement are sufficient in present day circumstances and whether the MFDA Penalty Guidelines are in need of modification in order to effectively combat this kind of misconduct.

17. MFDA counsel directed the panel's attention to the following decisions:

Re: Sherry L. McKenzie, MFDA file 201508, Central Regional Council. This was a contested hearing with respect to the alteration and reuse of 26 original or photocopies of previously used account forms, and the use of 7 blank or partially completed pre-signed forms. McKenzie had not cooperated with MFDA investigators. The panel permanently prohibited McKenzie from engaging in any securities-related business, imposed a fine of \$10,000 in relation to the use of pre-signed forms and a fine of \$50,000 for the failure to cooperate, and ordered the payment of costs in the amount of \$5,000.

Re: Philip Anthony Lewin, MFDA File 201656, Settlement Agreement Hearing March 30, 2017, Central Regional Council. Lewin used 22 pre-signed forms in respect of 5 clients. The forms consisted of redemption forms and pre-authorized contribution agreement forms. Lewin approved the use of pre-signed account forms in his capacity as branch manager. There were no prior warnings. The panel imposed a fine of \$8,000 and a 3-month prohibition against being a branch manager. In addition, the panel required Lewin to undertake and successfully complete the Branch Manager Course and to pay costs of \$2,500.

Re: Tanis Karen Techer, MFDA File 201662, December 5, 2016, Prairie Regional Council. Techer falsified and altered a client form for the purpose of processing a transaction and she obtained 9 pre-signed forms in respect of 5 clients. Three of the forms were used to process transactions. There had been no prior warnings and Techer was not a branch manager. The panel imposed a fine of \$5,000, ordered the payment of costs of \$2,500 and prohibited Techer from engaging in a securities-related business for 3 months.

Re: Adeolu Akinbola Durotoye, MFDA File 201328, May 20, 2014, Central Regional Council. Durotoye was a Branch Manager who obtained and used 5 partially completed or whited-out pre-signed forms to complete 3 transactions for 3 clients. As branch manager he reviewed and approved 30 blank or partially completed pre-signed forms, or forms altered with white-out. There were no prior warnings. The panel imposed a fine of \$2,500, ordered the payment of costs of \$2,500 and imposed a 6-month prohibition on being a branch manager.

Re: Gerard Van Schothorst, MFDA File 201678, March 22, 2017 Settlement Agreement, Prairie Regional Council. Schothorst obtained, possessed and in some cases used 5 pre-signed account forms in relation to 2 clients. In his capacity as branch manager he reviewed and approved the use of the 5 pre-signed account forms. There were no prior warnings. The panel accepted the settlement agreement that imposed a fine of \$6,500, ordered payment of costs of \$2,500, prohibited Schothorst from being a branch manager for one month, and required Schothorst to successfully complete the Branch Manager Course.

18. Having regard for the cited authorities, the panel concludes that the present settlement agreement falls within the range of acceptability, albeit at the very low end thereof. We say that for the reason that the Respondent was found to have used pre-signed forms on two prior occasions, previously acknowledged that the use of such forms was improper and prohibited, and committed in each of those instances to refrain from using pre-signed forms. Nonetheless she repeated the contraventions of the By-laws a third time when a branch manager. She now expresses remorse and understanding. It remains to be seen whether the remorse and understanding are real. In the panel's opinion, in addition to the agreed sanctions, this is an instance where prohibition from conducting any securities-related business for a period of time may have been warranted.

19. For the foregoing reasons, the panel approved the Settlement Agreement and the resulting Order.

DATED this 29th day of May, 2017.

“Ian H. Pitfield”

Ian H. Pitfield
Chair

“Bob Sokugawa”

Bob Sokugawa
Industry Representative

“David Webb”

David Webb
Industry Representative

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