



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: Kevin William Gallant

Heard: May 17, 2018 in Vancouver, British Columbia

Decision: May 17, 2018, 2018

Reasons for Decision: June 8, 2018

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Robert G. Ward, QC
Elizabeth Chichka
Robert Sokugawa

Chair
Industry Representative
Industry Representative

Appearances:

Christopher Corsetti)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Kevin William Gallant)	Respondent, by teleconference
)	
)	

Introduction

1. On May 17, 2018 we approved a Settlement Agreement dated January 18, 2018 (the “Settlement Agreement”) between the Mutual Fund Dealers Association of Canada (“MFDA”) and Kevin William Gallant (the “Respondent”). After submissions on behalf of counsel for the MFDA, we made the following Order at that time.

- a) the Respondent shall pay a fine of \$6,500, pursuant to Section 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1; and
- c) 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

Registration History

2. The Respondent has been registered in the securities industry since 2004.
3. Since September 28, 2009, the Respondent has been registered in British Columbia as a dealing representative with WFG Securities Inc. (“WFG”), a Member of the MFDA.
4. At all material times, the Respondent carried on business in the Kelowna, British Columbia area.

Pre-Signed Forms

5. At all material times, WFG'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 account forms.
6. On or about August 16, 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, ten pre-signed account forms in respect of five clients.
7. The pre-signed forms consisted of purchase, redemption and Know-Your-Client forms

Action Taken By Member

8. WFG detected the conduct that is the subject of this Settlement Agreement during a review of client files maintained by the Respondent.
9. As part of its investigation, WFG sent letters to all the clients serviced by the Respondent for whom the Respondent obtained or used pre-signed forms in order to determine whether the Respondent had engaged in any unauthorized trading activity in the clients' accounts. None of the clients reported any concerns to WFG.
10. WFG placed the Respondent on close supervision for a period of 6 months resulting from the misconduct described above.

Additional Factors

11. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
12. There is no evidence that:
 - a) the Respondent processed any transactions without the authorization of his clients;
 - b) clients suffered any financial loss;

- c) the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner; and
- d) any clients have complained about the Respondent's conduct.

Considerations of the Panel

13. The issue respecting the prohibition of Approved Persons from conducting business by using blank or partially completed pre-signed account forms, including photocopies of pre-signed account forms, has been dealt with on numerous occasions, and was recently considered in a decision of an MFDA Hearing Panel in the case of *Re Navdeep Singh Sandhu* [2018] File No. 2017109. The considerations therein are the same considerations of this Panel with respect to Mr. Gallant. As the Panel in the Sandhu case stated:

“14. The Panel recognizes that it is to accept or reject a Settlement Agreement, and that it is not to impose its own view of what the appropriate penalty should be under all of the circumstances. The Panel is not permitted to amend the Settlement Agreement or to substitute its view as to the appropriate penalty. Specifically, it is to consider whether:

- a) acceptance of the settlement agreement will 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 in the settlement agreement;
- c) the settlement agreement addresses the issues of both specific and general deterrence;
- d) the proposed settlement agreement 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.

Re Jacobson, [2007] MFDA 27 File No. 200712

15. The role of a Hearing Panel has been definitively stated and followed in numerous authorities including:

Sterling Mutuals Inc. (Re), [2008] MFDA 16, File No. 200820

Re Milewski (1999) 1 I.D.A.C.D. No. 17, a decision of the Ontario District Council

16. Moreover, the primary objective in protecting the public may be addressed in a flexible and efficient manner through a settlement agreement. It may be tailored to address the interests of both the Commission and the person under investigation; it may be used to settle some matters and direct resources to matters that are truly in dispute; and they may do so in a manner that is cost effective.

17. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to each Registrant in the mutual fund industry. Thus, the Rule prescribes (inter alia) that each registrant shall deal fairly, honestly and in good faith with his 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.

18. Pre-signed documents may have serious consequences including (but not limited to) affecting the integrity and reliability of documents, destroying the audit trail, and potentially facilitating other misconduct such as unauthorized trading, fraud and misappropriation of funds. Using such forms generally reflects a business practice which is unbecoming or detrimental to the public interest.

19. The MFDA has been warning Approved Persons against the use of pre-signed documents for a number of years.

MFDA Staff Notice #MSN-0035 dated December 10, 2004 (updated in 2015¹) [sic]; MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017); MFDA Bulletin #00661-E dated October 2, 2015.

20. The latter notice expressly warned Members and mutual fund salespersons that the MFDA has recently been and will continue to seek increased penalties in upcoming cases involving signature falsification. Despite that, the use of pre-signed documents appears to be ongoing and a common form of misconduct which is frequently being considered by various Hearing Panels.

21. The prohibition on the use of pre-signed documents applies, regardless of whether or not the client has given verbal authorization, and whether or not the documents are actually used by Approved Persons for discretionary trading or other improper purposes. MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017).”

14. We have been referred to a number of cases including:

- a) *Re Robert John Kitt* (2016) No. 201554
- b) *Re Pragya Kakkar* (2017) No. 2017108
- c) *Re Gary William Ward* (2017) No. 201773.

Factors Applicable to the Respondent

15. The use of pre-signed account forms is a serious breach of MFDA Rule 2.1.1, particularly considering the number of warnings to the industry to eliminate the practice over the past decade.

16. There is no evidence clients suffered financial losses.

¹ The update was in 2013.

17. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding other than the commissions and fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
18. The Respondent has been registered in the mutual fund industry since 2004. He is an experienced Dealing Representative and ought to have known and respected his Member's and the MFDA's compliance requirements.
19. The Respondent has not previously been subject to MFDA disciplinary proceedings.
20. The Respondent has been cooperative and has accepted responsibility for his misconduct.
21. The proposed penalties are consistent with the Penalty Guidelines.
22. It is clear to the Panel that the Settlement Agreement is well within the range of propriety based on the precedent authorities.
23. The penalties agreed to are adequate to address both specific and general deterrence, to maintain confidence and integrity of the MFDA and the regulatory process, and in the public interest. Thus we have approved the Settlement Agreement.

DATED this 8th day of June, 2018.

"Robert G. Ward"

Robert G. Ward, QC
Chair

"Elizabeth Chichka"

Elizabeth Chichka
Industry Representative

“Robert Sokugawa”

Robert Sokugawa
Industry Representative

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