



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: Christopher M. Garofalo

Heard: July 28, 2016 in Toronto, Ontario
Reasons for Decision: August 10, 2016

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Wanda Traczewski	Industry Representative
Paige A. Wadden	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Wendy Sun)	Counsel for the Respondent
)	

Settlement Agreement

1. The Hearing Panel in this matter accepted the settlement agreement dated May 25, 2016 (the “Settlement Agreement”) between the staff of the MFDA (“Staff”) and Christopher Garofalo (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 between 2013 and 2014 he did not adequately supervise his unlicensed assistants, for whom he was responsible, with respect to the use of five (5) pre-signed account forms, and one (1) account form where the Respondent’s assistant had cut a client signature from a previously signed account form and re-used it, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were that the Respondent will pay a fine in the amount of \$8,500 and costs of in the amount of \$2,500.

4. In addition to the agreed penalties, as part of its own compliance enforcement action consequent on the discovery of the contraventions by the Respondent’s Member, the Respondent’s Member required the Respondent to complete the Branch Manager’s Course offered by the Canadian Securities Institute.

Considerations

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

Pre-signed account forms

6. 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] Hearing Panel of the Ontario Regional Council, MFDA File No. 201311, Panel Decision dated September 4, 2013

Price (Re), [2011] Hearing Panel of the Ontario Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011

Re-use of client signature on account form

7. 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 Central 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

8. Use of an altered form is a serious violation of the contravention of the standard of conduct under MFDA Rule 2.1.1. The replication of a client signature or initials is particularly serious. The authenticity of client signatures is one of the foundations upon which client trust is established and client instructions are carried out. Unlike pre-signed account forms where the client knows he or she is signing an incomplete form to be used in some way, in the case of a form altered by the Approved Person the possibility exists that the client is unaware of the Approved Person's actions.

Inadequate supervision of assistants

9. MFDA Rule 2.1.1 has a broad application. It provides for a standard that is able to encompass misconduct not directly captured by the Rules. For example, in *Barak (re)*, the Hearing Panel found that the Approved Person was responsible for the actions of his assistant, who, obtained, possessed, and in some instances, used to process transactions, pre-signed account forms.

Barak (re) [2016], Hearing Panel of the Central Regional Council, MFDA File No. 201635

10. The Respondent was responsible for the misconduct of his assistants because he did not adequately supervise them.

Certain other factors considered in assessing the appropriateness of the agreed penalties

11. There was no evidence of client harm.

12. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct, including any commissions and fees.

13. The Respondent has been registered in the mutual fund industry since 2001. He was registered as a branch manager during the material time period. He ought to have known and respected the compliance requirements of the Member and the MFDA. It was appropriate that the Member required him to take the CSI Branch Managers Course.

14. The Respondent has not previously been subject to MFDA disciplinary proceedings, but in 2012, the Member identified 16 pre-signed account forms in client files. As a result, both the Member and Staff issued a warning letter to the Respondent.

15. 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.

Deterrence

16. The fine of \$8,500 and costs of \$2,500 are significant and send a message to the Respondent and others in the capital markets with regard to the seriousness of the misconduct at issue.

Penalty guidelines

17. The fine of \$8,500 is greater than the suggested minimum fine of \$5,000 for this type of rule violation as set out in the MFDA Penalty Guidelines. The greater amount was appropriate because of the seriousness of the conduct, the Respondent's position as a branch manager, and because the Respondent had previously been warned against the use of pre-signed account forms.

Previous decisions

18. The agreed penalties are within the reasonable range of appropriateness with regard to other decisions made by MFDA hearing panels in similar circumstances. In particular, we reviewed the following cases:

- a. *Richardson (Re)*, [2016], Hearing Panel of the Central Regional Council, MFDA File No. 201536, Panel Decision dated October 2, 2015;
- b. *Fenton (Re)* [2016], Hearing Panel of the Central Regional Council, MFDA File No. 201607, Panel Order dated May 26, 2016;
- c. *Shah (Re)* [2015], Hearing Panel of the Central Regional Council, MFDA File No. 201530, Panel Decision dated December 21, 2015.

Fair and reasonable

19. 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 hearing panel would ever conclude that the agreed penalties were unfair and not reasonable.

Costs

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

Conclusion

21. 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 10th day of August, 2016.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Wanda Traczewski”

Wanda Traczewski
Industry Representative

“Paige A. Wadden”

Paige A. Wadden
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: Christopher M. Garofalo

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Christopher Garofalo, 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: between January 2013 and May 2014, the Respondent did not adequately supervise his unlicensed assistants, for whom he was responsible, with respect to the use of 5 pre-signed account forms and 1 account form where the Respondent's assistant had cut a client signature from a previously signed account form and re-used it, 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 \$8,500 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 2001, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA.

8. The Respondent was registered as a branch manager with Investors Group from June 2012 to September 2014.

9. At all material times, the Respondent conducted business in the Dundas, Ontario area.

10. At all material times, the Respondent conducted business with the support of his current unregistered assistant, BW (“Assistant BW”) and a former unregistered assistant, MB (“Assistant MB”). The Respondent was responsible for the actions of Assistants BW and MB.

Background

11. At all material times, Investors Group’s policies and procedures prohibited its Representatives, including the Respondent, from holding blank or partially complete pre-signed account forms.

12. The Respondent was aware that the use of blank or partially complete pre-signed account forms was not permitted. On November 12, 2012, Investors Group issued a warning letter to the Respondent after it identified 16 pre-signed account forms in client files. On April 2, 2013, Staff issued a warning letter to the Respondent with respect to the same conduct.

13. The Respondent states that as a result of the warning letters, he provided training to Assistant BW about the use of pre-signed account forms.

Pre-Signed Account Forms

14. Between January 2013 and May 2014, Assistant BW or Assistant MB obtained and used 5 pre-signed account forms to process transactions in respect of 3 clients. The 5 pre-signed account forms included Investment Instruction forms and Client Update forms (i.e., Know-Your-Client forms).

15. In all instances, the Respondent obtained instructions from the client to complete the transaction. The Respondent instructed either Assistant BW or Assistant MB to populate the requisite forms in accordance with client instructions. Assistant BW or Assistant MB then obtained pre-signed account forms from the clients.

16. The Respondent states that he not was aware that either Assistant BW or Assistant MB had obtained pre-signed account forms. The Respondent ought to have known that the account forms contained copies of client signatures once either Assistant BW or Assistant MB presented the forms to him for his signature.

Re-Use of a Client Signature on an Account Form

17. On February 10, 2014, Assistant BW altered 1 Investment Instruction Form by cutting a client's signature from a previously signed account form and taping it onto the Investment Instruction form, and then used the altered account form to process a transaction on behalf of the client.

18. In this instance, the Respondent obtained instructions from the client to complete the transaction. The Respondent then instructed Assistant BW to populate the requisite account form in accordance with client instructions and send it to the client for signature. Instead, Assistant BW altered the account form in the manner set out above.

19. The Respondent states that he was not aware that Assistant BW had altered the form at the time of the alteration. The Respondent ought to have known that the account form contained a signature that had been cut from one account form and taped onto a second one once Assistant BW presented the altered account form to him for his signature.

Failure to Supervise Assistants

20. The Respondent failed to adequately supervise Assistants BW and MB with respect to the use of the above-referenced account forms.

21. The Respondent states that he did not properly inspect the above-referenced account forms provided to him by either Assistant BW or MB before signing the forms in his capacity as an Approved Person.

22. It is the Respondent's responsibility to ensure that only properly executed forms are submitted to the Member.

23. On December 12, 2014, the Respondent provided a written statement to Staff in which he acknowledged his responsibility to properly supervise and train his assistants.

Investors Group's Investigation

24. Investors Group's compliance staff detected the conduct that is the subject of this Settlement Agreement as a result of a branch audit on or about September 8, 2014. Investors Group immediately commenced an investigation.

25. As part of its investigation, Investors Group conducted a sample review of 25 client files, which revealed no further issues.

26. Investors Group issued a Letter of Reprimand to the Respondent dated November 6, 2014, requiring the Respondent and his Assistants to sign a Letter of Undertaking with respect to pre-signed and altered forms and requiring the Respondent to complete the Branch Managers Course offered by the Canadian Securities Institute (both undertakings the Respondent has completed).

Additional Factors

27. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above, including any commissions and fees.

28. The Respondent states that all transactions were authorized by the clients.

29. There is no evidence of client harm.

30. 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.

IV. ADDITIONAL TERMS OF SETTLEMENT

31. 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.

32. 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.

33. 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

34. 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.

35. 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.

36. 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.

37. 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 25th day of May, 2016.

“BW”

Witness – Signature

“Christopher M. Garofalo”

Christopher M. Garofalo

BW

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: Christopher M. Garofalo

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 Christopher Garofalo (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 January 2013 and May 2014, the Respondent did not adequately supervise his unlicensed assistants, for whom he was responsible, with respect to the use of 5 pre-signed account forms and 1 account form where the Respondent's assistant had cut a client signature from a previously signed account form and re-used it, 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 \$8,500 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]