



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: Ronald Gibson

Heard: March 17, 2016, in Vancouver, British Columbia
Reasons for Decision: May 2, 2016

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. Thomas R. Braidwood, Q.C.	Chair
David B. Webb	Industry Representative
Liz Chichka	Industry Representative

Appearances:

Christopher Corsetti)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Tom Newnham)	Counsel for the Respondent
)	
)	

1. This is a settlement hearing pursuant to Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”).
2. MFDA Staff and the Respondent have entered into a Settlement Agreement dated March 2, 2016 (the “Settlement Agreement”) in which Ronald David Gibson (the “Respondent”) admits that:
 - (a) between January 2008 and January 30, 2015, the Respondent obtained, maintained and, in some instances used to process transactions, 19 pre-signed account forms in respect of 16 client accounts, contrary to MFDA Rule 2.1.1; and
 - (b) between January 2008 and January 30, 2015, the Respondent falsified and, in some instances, used to process trades, 5 account forms in respect of 6 clients, contrary to MFDA Rule 2.1.1;
3. The Respondent agrees, as a term of the Settlement Agreement, to pay a fine of \$10,000.00 and costs of \$2,500.00.

AGREED FACTS

Registration History

4. The Respondent has been registered in the securities industry since 1987.
5. From October 1, 2003 to November 30, 2012, the Respondent was registered in British Columbia as a mutual fund salesperson (now known as a dealing representative) with MGI Financial Inc. (“MGI”), a Member of the MFDA. On November 30, 2012, MGI amalgamated with Desjardins Financial Security Investments Inc. (“Desjardins”), a Member of the MFDA.
6. Since November 30, 2012, the Respondent has been registered in British Columbia as a dealing representative with Desjardins.

7. At all material times, the Respondent carried on business in Langley, British Columbia.

Pre-Signed Account Forms

8. At all material times, Desjardins and MGI maintained policies and procedures prohibiting their Approved Persons from obtaining and maintaining blank or partially complete pre-signed account forms, including photocopies of pre-signed account forms.

9. Between January 2008 and January 30, 2015, the Respondent obtained, maintained and, in some instances, used to process transactions, 19 pre-signed account forms in respect of 16 clients.

Falsified Accounts Forms

10. Between January 2008 and January 30, 2015, the Respondent falsified and, in some instances, used to process trades, 5 account forms in respect of 6 clients.

11. The Respondent altered the forms by crossing out information that was populated on the form after the client had signed the form, without having the client initial the alteration.

Desjardins' Investigation

12. Desjardins detected the conduct described above during the course of a routine audit of the Respondent's branch office on or about June 25, 2014, and its follow-up investigation which included a review of approximately 109 client files maintained by the Respondent.

13. As part of its investigation, Desjardins sent letters to all of the clients in whose accounts the Respondent had obtained, maintained or used pre-signed account forms to determine whether the Respondent had engaged in any unauthorized trading activity. None of the clients reported any concerns to Desjardins.

14. As a result of the Respondent's activities, Desjardins issued a discipline letter to the Respondent and placed him on close supervision for a period of three months.

15. There is no evidence that:

- (a) the Respondent processed any trades or changes to client information without the knowledge or authorization of his clients;
- (b) clients suffered any financial harm as a result of the maintenance or use of the Pre-Signed Forms by the Respondent;
- (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.

Additional Factors

16. The Respondent has been in the securities industry for 29 years and has no previous MFDA disciplinary history.

17. The Respondent has co-operated with the MFDA investigation and admitted his misconduct.

CONTRAVENTIONS

- (a) between January 2008 and January 30, 2015, the Respondent obtained, maintained and, in some instances used to process transactions, 19 pre-signed account forms in respect of 16 client accounts, contrary to MFDA Rule 2.1.1.; and

- (b) between January 2008 and January 30, 2015, the Respondent falsified and, in some instances, used to process trades, 5 account forms in respect of 6 clients, contrary to MFDA Rule 2.1.1.

SUBMISSIONS OF STAFF

MFDA Rule 2.1.1. – High Standard of Ethics

18. 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:

- (a) deal fairly, honestly, and in good faith with clients;
- (b) observe high standards of ethics and conduct in the transaction of business; and
- (c) refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

19. In previous MFDA cases such as the *Tonnies* case, Hearing Panels have determined that a Respondent's failure to comply with the Policies and Procedures of the Member constitutes a breach of the standard of conduct and MFDA Rules.

In the Matter of Arnold Tonnies, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005 at pp. 16-19 ("Tonnies"), MFDA Book of Authorities at Tab 2.

20. In this case, the Member had explicit policies throughout the material time that prohibited Approved Persons from obtaining, maintaining and using Pre-Signed Forms. It is submitted that these policies and procedures were contravened by the Respondent.

21. The use of pre-signed account forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misrepresentation. As the Hearing Panel explained in *Price (Re)*:

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), supra para 122-124, MFDA Staff's Book of Authorities, Tab 6.

General Principals Regarding the Acceptance of Settlement Agreements

22. The role of the Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As was stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, quoting the reasoning in the I.D.A matter of *Milewski (Re)*:

We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing, the Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

Sterling Mutuals Inc. (Re), 2008 MFDA 16, at para. 37, MFDA Staff's Book of Authorities, Tab 8

Milewski (Re), [1999] I.D.A.C.D. No. 17 a p. 11, Ontario District Council Decision dated July 28, 19099, MFDA Staff's Book of Authorities, Tab 9.

23. A number of cases have been cited concerning the reasonableness of the penalty, *Re: James Weller* and *Re: Martin Paul Harris*, to name only two.

CONCLUSION

24. Having regard to all the circumstances, the Hearing Panel is unanimously of the opinion that the settlement between the parties should be approved. Accordingly, the Respondent must pay a fine \$10,000.00 and costs of \$2,500.00.

DATED this 2nd day of May, 2016.

“Thomas R. Braidwood”

The Hon. Thomas R. Braidwood, Q.C.
Chair

“Liz Chichka”

Liz Chichka
Industry Representative

“David B. Webb”

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