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: Jacqueline Gail Gill

Heard: March 22, 2018 in Toronto, Ontario
Decision: March 22, 2018
Reasons for Decision: April 16, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Edward V. Jackson	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Paul Blasiak	)	Counsel for the Mutual Fund Dealers Association of Canada
Jeremy Devereux	)	Counsel for the Respondent
Jacqueline Gail Gill	)	Respondent, in person

Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on Thursday, March 22, 2018. The full Settlement Agreement, dated December 27, 2017, entered into between Staff of the MFDA and Jacqueline Gail Gill ("Ms. Gill" or the "Respondent") is available on the MFDA website. Ms. Gill was represented by counsel and appeared in person.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the March 22, 2018 hearing, with reasons to follow. These are our reasons for the decision.

3. From October 1996 to February 2013, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Scotia Securities Inc. ("Scotia Securities"), a member of the MFDA. At all material times, the Respondent conducted business at a bank branch in Waterloo, Ontario.

4. Since August 2013, the Respondent has been registered in Ontario as a dealing representative with a member of the Investment Industry Regulatory Organization of Canada (IIROC). She is not registered with the MFDA.

Misconduct

5. The allegations in the Notice of Settlement Hearing state that the Respondent:

   a) between August 2011 and March 2012, opened an account for a client [BH], recorded the client's Know-Your-Client information, and on three occasions processed a total of two transfers and three trades in the client's account without having met or communicated with the client, thereby failing to use due diligence to learn the essential facts relative to the client and to each order or account accepted, contrary to MFDA Rules 2.2.1 and 2.1.1, and

b) on or about November 23, 2011, completed a trade form which incorrectly indicated that she spoke with a client [BH] and obtained the client's authorization to process two trades in the client's account, contrary to MFDA Rule 2.1.1.

6. The facts are set out in detail in the Settlement Agreement, in paragraphs 10 to 21. In brief, they involve BD, a fellow worker of the Respondent at the same bank branch, who was an Approved Person, and her father, BH. The father and daughter had a joint bank account at the bank branch. Her father had a Registered Retirement Income Fund ("RRIF") account at another mutual fund dealer. BD claimed that she had her father's power of attorney and arranged for the Respondent to transfer the father's RRIF account, worth about $30,000, to Scotia Securities and then to transfer about $17,500 of those funds to their joint bank account. BH, the father of BD, was not consulted about these transactions and only became aware of them and the fact that there was a joint bank account in December 2015. He then brought the matter to the attention of Scotia Securities, who reversed the redemptions several months later.

7. Paragraph 12 of the Settlement Agreement states in part: "The Respondent states that BD told her that she held a power of attorney from Client BH and that she looked after his financial affairs. The Respondent did not receive or review any power of attorney or similar authorization that authorized the Respondent to act on the request of BD on behalf of client BH, and Staff's investigation did not identify any such power of attorney or similar authorization."

Settlement Agreement

8. The Respondent agreed to the statement of facts set out in the Settlement Agreement and admitted in paragraph 4 of the Settlement Agreement to the violations of the By-laws, Rules or Policies of the MFDA alleged above in paragraph 5. In paragraph 6 of the Settlement Agreement, 'Staff and the Respondent agree to the settlement on the basis of the facts set out … and consent to the making of an Order in the form attached…".

9. Staff and the Respondent agreed and consented to the following terms of settlement:

a) the Respondent shall pay a fine in the amount of $15,000 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 Rules 2.2.1 and 2.1.1; and

d) the Respondent will attend in person on the date set for the Settlement Hearing.

The Law

10. The obligation to "Know-Your-Client" and take instructions from your client is known by all members of the industry. As counsel for the MFDA stated in his submissions, citing *Re Badasha* (File No. 201424) and *Re Wray* (File No. 201661):

> "Previous MFDA Hearing Panels have held that where an Approved Person opens a client account, updates the client's Know-your-Client information and/or processes trades in the client's account without communicating directly with the client, the Approved Person has violated the Know-Your Client obligation in Rule 2.2.1 and the standard of conduct in Rule 2.1.1."

11. The Panel in *Re Wray* stated at paragraph 32:

> "In order to fulfill the Know-Your-Client obligation, an Approved Person is required to learn the essential facts about his or her client directly from the client. In the absence of a power of attorney, it is not sufficient to consult with a third party, including even the client's spouse, for the purpose of obtaining Know-Your-Client information or trading instructions."

Acceptance of Settlement Agreement

12. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

13. The conduct in this case was serious. The Respondent did not take reasonable steps to determine whether a power of attorney existed. She says that she relied on the statements and actions of BD who she trusted as a fellow employee.

14. In mitigation, the Respondent started in the industry in 1996 and has not previously been the subject of MFDA disciplinary proceedings.

15. Further, because Scotia Securities reversed the redemptions the client did not suffer lasting financial harm.

16. Only one client was affected by the Respondent's conduct and the Respondent submitted only one incorrect trade form to the Member.

17. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary proceeding.

18. The penalty is in line with the Penalty Guidelines and the other cases cited to us. The penalty in *Re Badasha* included a two- year prohibition from conducting securities related business, but the conduct in that case was much more serious and involved many more clients than in this case. The penalty is exactly the same as that in *Re Wray*. The penalty in the present case of $15,000 will provide specific deterrence to the Respondent and general deterrence to others.

19. It should also be noted that since the events described above, the Respondent has successfully completed a number of securities industry courses including the Canadian Securities Course and the Conduct and Practices Handbook Course, which address the requirements with respect to account opening and client trading instructions.

20. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

> "Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the

> statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation."

21. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

22. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: "A District Council considering a settlement agreement 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." This is particularly so, we should add, when experienced counsel, as in the present case, have been the negotiators.

23. The penalty agreed to in this case clearly falls within "a reasonable range of appropriateness."

24. For the above reasons we accepted the Settlement Agreement.

DATED this 16th day of April, 2018.

"Martin L. Friedland"

Martin L. Friedland, CC, QC
Chair

"Edward V. Jackson"

Edward V. Jackson
Industry Representative

"Kenneth P. Mann"

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