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: Orrin Gilmour

Heard: January 5, 2021 by electronic hearing in Toronto, Ontario
Decision: January 5, 2021
Reasons for Decision: January 13, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Edward V. Jackson	Industry Representative
Selwyn B. Kossuth	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Orrin Gilmour	)	Respondent, without counsel

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 by way of a video conference on Tuesday, January 5, 2021. The full Settlement Agreement, dated November 18, 2020, entered into between Staff of the MFDA and Orrin Gilmour ("Mr. Gilmour" or the "Respondent") is available on the MFDA website and will not be set out in detail here. Mr. Gilmour appeared at the Settlement Hearing and was not represented by counsel.

2. At the conclusion of the hearing, the Hearing Panel accepted the proposed Settlement Agreement, with reasons to follow. These are our reasons for the decision.

3. The Respondent was registered in Ontario from July 30, 2014 to June 26, 2019 as a Dealing Representative with Royal Mutual Funds Inc. (the "Member"), a Member of the MFDA.

4. On June 26, 2019, the Member terminated the Respondent's registration in connection with the matters that are the subject of this Settlement Agreement. The Respondent is not currently registered in the securities industry in any capacity. At all material times, the Respondent conducted business in the Ottawa, Ontario area

Allegations

5. Proceedings against the Respondent were commenced by a Notice of Settlement Hearing, dated December 7, 2020. In paragraph 4 of the Settlement Agreement the Respondent admits that:

a) between February 9, 2019 and March 23, 2019, the Respondent signed the signature or initials of 1 client on 3 forms, and submitted the forms to the Member for processing, contrary to MFDA Rule 2.1.1; and

b) on or around March 27, 2019, the Respondent misled the Member when he falsely denied to his branch manager that he signed the client's signature on an account form, contrary to MFDA Rule 2.1.1.

Signing a client signature or initials on account forms

6. It is well known in the industry, as stated in an MFDA Staff Notice (MSN-0066, October 31, 2007 and updated March 4, 2013 and January 26, 2017) that "Members and Approved Persons may only use forms that are executed by the client after information on the form has been properly completed." See also MFDA Bulletin #0661-E, dated October 2, 2015, which states: "This Bulletin

is a reminder that Hearing Panels of the MFDA Regional Councils have consistently ruled that falsification of client signatures is not permissible under MFDA Rules."

7. There are numerous MFDA cases dealing with improperly signing a client's name on a form or having pre-signed forms. See, for example, with respect to improper signatures: *Re Foley* MFDA File No. 201547; *Re Xiang He* MFDA File No. 201854; *Re Truong* MFDA File No. 201904; *Re Tacarda* MFDA File No. 201958; and *Re Castelino* MFDA File No. 202019.

8. In both cases – i.e., signing a client's name on a form or using pre-signed forms – their use 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 misappropriation. As the Hearing Panel explained in *Re Price* MFDA File No. 200814 (at paragraphs 122-124), a case dealing with pre-signed forms:

> "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."

Although the current matter relates to signing a client's name on a form, the same principles apply.

Misleading the Member

9. The Respondent also admits in the Settlement Agreement that he misled the Member. Paragraphs 13, 14, and 15 of the Settlement Agreement state: "On or about March 27, 2019, during the course of a compliance review, the Respondent's branch manager identified the irregular signature of the client on the RSP [Retirement Savings Plan] Application and Account Opening Information (KYC) form….After contacting the client and confirming that she had not signed the forms, the branch manager met with the Respondent and asked him about the signatures on the account forms.…The Respondent falsely denied signing the client's signature.…"

10. Hearing Panels have held that providing the Member with incorrect information is a violation of MFDA Rule 2.1.1. See, for example, *Re MacWhirter* File No. 201541; *Re Xiang He*

MFDA File No. 201854; *Re Truong* MFDA File No. 201904; and *Re Castelino* MFDA File No. 202019.

Terms of Settlement

11. The Respondent agreed to the following terms of settlement:

a) the Respondent shall pay a fine of $13,500 in certified funds upon acceptance of the Settlement Agreement, 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 in certified funds upon acceptance of the Settlement Agreement, 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.

Acceptance of Settlement Agreement

12. As stated above, the Hearing Panel accepted the terms of the Settlement Agreement. A Hearing Panel can either accept or reject a Settlement Agreement. It cannot modify it. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.

13. The conduct in the present case is serious. The Respondent was an experienced Approved Person. Misleading the Member is particularly serious. Moreover, signing a client's signature appears to us to be more serious than using pre-signed forms. Clients who pre-sign forms know that they have done so, but in the case of placing a client's signature on a document, the client may not know that the Approved Person has put their signature on a document. The possibility of subsequent improper conduct by the Approved Person increases in such a case.

14. In mitigation, no harm was suffered by the investor in this case and the client was aware of and authorized the transactions.

15. This was an isolated incident. The Member conducted a review of the Respondent and did not detect any other instances of the Respondent signing a client's signature.

16. Further, the Respondent did not profit from the transactions except to the extent that he earned a regular commission. And by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct and recognizes its seriousness.

17. A fine of $13,500 (plus costs of $2,500) is not an insignificant amount. As stated above, it provides specific deterrence to the Respondent and a measure of general deterrence to others in the industry.

18. The penalty imposed is not out of line with the cases cited by counsel. The conduct and penalty in the present case are almost exactly the same as that imposed in a recent Settlement Agreement: *Re Castelino* MFDA File No. 202019. See also *Re Botescu* MFDA File No. 202067; *Re Bilton* MFDA File No. 202039; and *Re He* MFDA File No. 201854.

19. The Respondent has never been the subject of a disciplinary proceeding by the MFDA and cooperated with Staff during its investigation into his conduct. By entering into the Settlement Agreement, the Respondent saved the MFDA the time, resources, and expense associated with conducting a full hearing of the allegations.

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 affirmed the British Columbia Supreme Court's statement with respect to a settlement by the British Columbia Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.C.A. No. 484, para. 31):

> "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 Hearing 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 or what interest each party has in agreeing to resolve the matter.

22. As a Hearing Panel stated (*Re Keshet*, September 3, 2014, File No. 201419 at paragraph 7) "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 Hearing Panels.

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

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

DATED this 13th day of January, 2021.

"Martin L. Friedland"
Martin L. Friedland, C.C., Q.C.
Chair

"Edward V. Jackson"
Edward V. Jackson
Industry Representative

"Selwyn B. Kossuth"
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