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: Norman John Haines

Heard: December 3, 2019 in Vancouver, British Columbia
Decision: December 3, 2019
Reasons for Decision: December 17, 2020

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Stephen D. Gill	Chair
Liz Chichka	Industry Representative
Holly Millar	Industry Representative

Appearances:

Justin Dunphy	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Norman John Haines	)	Respondent

I. INTRODUCTION

1. By a settlement agreement dated September 26, 2019, (the "Settlement Agreement") Staff of the Mutual Fund Dealers Association of Canada ("Staff") and Norman John Haines (the "Respondent") agreed to the settlement of this matter by way of a signed agreement. In the Settlement Agreement, the Respondent admitted to the following violations of the By-laws, Rules or Policies of the MFDA:

a) Between February 2017 and March 2018, the Respondent signed the signatures of 2 clients on 10 account forms, and submitted the forms to the Member for processing, contrary to MFDA Rule 2.1.1.

2. Staff and the Respondent agreed to a fine in the amount of $15,000, and costs in the amount of $2,500, payable by the Respondent. Further, that the Respondent shall in the future comply with MFDA Rule 2.1.1; and the Respondent will attend in person at the Settlement hearing.

3. Staff submitted, and we agree, that the settlement advances the public interest as it is reasonable and proportionate having regard to the nature and extent of the Respondent's misconduct, and all of the circumstances. At the hearing, having heard submissions, and considered the Settlement Agreement including the Agreed Facts, the Hearing Panel accepted the Settlement Agreement. These are the Reasons for that decision.

4. It is well settled that the role of a Hearing Panel considering a Settlement Agreement is very different than its role at a contested hearing. The decision of *Re Milewski*, cited by the Hearing Panel in *Re Sterling Mutuals* (MFDA file no. 200820. Sept 3, 2008) stated:

> "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."

5. Hearing Panels have also held that settlements negotiated by the parties should be respected, as Hearing Panels do not know what led to the settlement, or what was given up by the respective parties during the negotiations.

6. Staff submitted, and we agree, that settlements assist the MFDA in meeting its objective of protecting the public by proscribing activity that is harmful to the public, and by enabling flexible remedies tailored to the interests of both the MFDA and a Respondent. Further, that the ability of the MFDA to enter into settlements is enhanced where Hearing Panels do not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness. (*BC Securities Commission v. Seifert*, 2007 BCCA 484 at para 31.)

7. In past cases, MFDA Hearing Panels have taken into account the following considerations in deciding whether a proposed settlement should be accepted:

a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
b) Whether the settlement agreement is reasonable and proportionate having regard to the conduct of the Respondent set out in the settlement agreement;
c) Whether the settlement agreement addresses the issues of both specific and general deterrence;
d) Whether the settlement agreement will prevent the type of conduct described therein from occurring again in the future;
e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets, and the MFDA;
f) Whether the settlement agreement will foster confidence in the regulatory process itself.

Re Sterling Mutuals Inc. (supra)

8. The primary goal of securities regulation is the protection of the investor. Further, this goal includes fostering public confidence in the capital markets and the securities industry: *Pezim v. BC (Superintendent of Brokers)* 1994 2 SCR 557 (SCC) at paragraphs 59, 68.

9. Staff also referred the Hearing Panel to the MFDA Sanction Guidelines (November 15, 2018) which are not mandatory but are intended to provide guidance to Hearing Panels. Sanctions should be preventative, protective and prospective in nature. In exercising its discretion to impose a penalty, the Hearing Panel should take into account the following considerations:

a) the protection of the investing public;
b) the integrity of the securities market;
c) specific and general deterrence;
d) the protection of the MFDA membership; and
e) the protection of the integrity of the MFDA's enforcement processes.

> *Re Breckenridge*, MFDA File No. 200718, November 14, 2007, at page 21, paragraph 10.

10. We adopt the following from the reasons of the Hearing Panel in *Re Breckenridge*, supra: Previous Hearing Panels have set out a number of additional factors which should be considered when determining an appropriate penalty. These include:

a) the seriousness of the allegations proved against the Respondent;
b) the Respondent's experience in the capital markets;
c) the level of the Respondent's activity in the capital markets;
d) the harm suffered by investors as a result of the Respondent's activities;
e) the benefits received by the Respondent as a result of the improper activity;
f) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
g) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
h) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets from engaging in similar improper activity;
i) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
j) previous decisions made in similar circumstances.

Re Breckenridge, supra, page 21, para 10

11. It is clear that Hearing Panels have held that falsifying forms is a contravention of the standard of conduct set out in MFDA Rule 2.1.1: *Re Ewert*, MFDA File No. 201528, September 11, 2015. 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: deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business or practice which is unbecoming or detrimental to the public interest.

12. Staff submitted there was an additional factor to be considered in this case: namely that MFDA Bulletin #0661-E dated October 2, 2015, reminded members and approved persons that Signature Falsification is not permissible under MFDA Rules. In the Bulletin, Staff advised that they would be seeking enhanced penalties for conduct that occurred after the publication of the Bulletin on October 2, 2015.

13. Staff submitted, and we agree, that the Respondent's misconduct is serious, and he knowingly breached the Rules.

14. In the case of *Re Barnai*, MFDA File No. 201325, March 17, 2015 the Hearing Panel summarized the principles with respect to falsifying client signatures:

> "6. Falsifying client signatures or initials is serious misconduct. Signature falsification (like the use of pre-signed 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 misappropriation."

15. The Respondent was an experienced representative: he was registered from January 2003 until April 2018. No previous offences were alleged by Staff. Further, by entering into the Settlement Agreement he has accepted responsibility for his misconduct, and avoided the necessity of the MFDA proceeding to a full contested hearing. Staff's investigation did not reveal any evidence of unauthorized trades or client losses, and there is no evidence that the Respondent received a financial or other benefit through his conduct, and no evidence of client complaints.

16. In our view the fine of $15,000, and costs of $2,500 is a serious penalty and will achieve specific and general deterrence. Staff cited 4 other cases of similar facts, and the penalties agreed upon here are in line with the penalties in those other cases.

17. Staff submitted, and we agree, that the penalties in the Settlement Agreement are reasonable and proportionate, and will deter the Respondent, and other Approved Persons from falsifying client signatures.

18. Having thoroughly reviewed the facts and admissions set forth in the Settlement Agreement, and having considered the submissions and authorities referred to us, this Hearing Panel concluded that the Settlement Agreement should be approved, and we so ordered.

DATED this 17th day of December, 2020.

"Stephen D. Gill"
Stephen D. Gill
Chair

"Liz Chichka"
Liz Chichka
Industry Representative

"Holly Millar"
Holly Millar
Industry Representative

DM 784884