



**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: David Lawrence Hennessey**

Heard: February 23, 2017 in Toronto, Ontario

Decision: February 23, 2017

Reasons for Decision: March 27, 2017

**REASONS FOR DECISION FOR ACCEPTANCE OF  
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Robert C. White

Greg Juby

Chair

Industry Representative

Industry Representative

Appearances:

Paul Blasiak

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Counsel for the Mutual Fund Dealers  
Association of Canada

David L. Hennessey

Respondent, By teleconference

## **Settlement Agreement**

1. The Hearing Panel accepted the settlement agreement dated November 13, 2016 (the “Settlement Agreement”) between the staff of the MFDA and David L. Hennessey (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 January 2015 and February 2015, he falsified the signatures of five (5) clients on ten (10) account forms, contrary to MFDA Rule 2.1.1.

## **Agreed penalties**

3. The agreed penalty was a prohibition on the Respondent from conducting securities related business for a period of six (6) months and that the Respondent pay costs in the amount of \$1,000.

## **Considerations**

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the settlement agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty 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 penalty 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 penalty.

## **Considerations in determining acceptability of agreed penalty**

5. The Respondent's employment was terminated by the member as a result of the misconduct. He is no longer registered in any capacity in the securities business.

6. There was no evidence of client loss or evidence that any of the transactions with the account forms were unauthorized.

7. There was no evidence that the Respondent received any financial benefit from his misconduct in addition to usual fees or commissions.

8. The agreed penalty helps the MFDA to send a message to the Respondent and others in the capital markets about the seriousness of the misconduct.

9. The Respondent has not previously been subject to MFDA disciplinary proceedings.

10. 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.

11. The MFDA penalty guidelines recommend one or more of the following sanctions for misconduct of the nature in our case: a minimum fine of \$5,000; writing or re-writing an appropriate industry course; suspension. The guidelines are not mandatory but are intended to assist hearing panels, MFDA staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings.

12. The Respondent is no longer in the securities business. The incidents in question were low in number and occurred over a short period. We determined that the agreed penalty would have a deterrent impact on the Respondent as was acceptable in the circumstances.

13. The agreed penalty is within the reasonable range of appropriateness with regard to other decisions, submitted to us by staff, made by MFDA hearing panels in similar circumstances.

## Conclusion

14. We concluded that the agreed penalty was within an acceptable range based on precedents, would serve as a specific and general deterrent, and was fair and reasonable. We considered the costs award to be reasonable in the circumstances. We concluded, therefore, that the Settlement Agreement was in the public interest and, consequently, we accepted it.

**DATED** this 27<sup>th</sup> day of March, 2017.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Robert C. White”

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Robert C. White  
Industry Representative

“Greg Juby”

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Greg Juby  
Industry Representative

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and David Lawrence Hennessey (the "Respondent"), 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:

- a) between January 2015 and February 2015, the Respondent falsified the signatures of 5 clients on 10 account forms, 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 be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of 6 months from the date of the Settlement Hearing, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$1,000 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 by teleconference 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. The Respondent was registered in the securities industry commencing in 1998.

8. From September 2010 to March 2015, 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.

9. On March 9, 2015, the Respondent was terminated as a result of the matter described herein, and is not currently registered in the securities industry.

10. At all material times, the Respondent conducted business in the Scarborough, Ontario area.

### **Falsification of Client Signatures**

11. At all material times, Scotia Securities' Guidelines for Business Conduct prohibited its Approved Persons, including the Respondent, from falsifying client signatures.

12. Between January 6, 2015 and February 20, 2015, the Respondent falsified the signatures of 5 clients on 10 account forms, and submitted the forms to Scotia Securities for processing. The falsified account forms are summarized in the table below.

<b>Client</b>	<b>Type of Form</b>	<b>Date of Form</b>
MM	Investment Directions – Redemption	January 6, 2015
BM	Investment Directions – Redemption	January 21, 2015
AK	Investment Directions – Purchase	January 22, 2015
PS	Know-Your-Client	January 22, 2015
HG	Account Application – RRSP	February 20, 2015
HG	Know-Your-Client – RRSP	February 20, 2015
HG	Investment Directions – Purchase	February 20, 2015
HG	Account Application – TFSA	February 20, 2015
HG	Know-Your-Client – TFSA	February 20, 2015
HG	Investment Direction – Purchase	February 20, 2015

13. The Respondent states that he falsified the client signatures described above after discussing the transactions or information on the account forms with the clients.

### **Action Taken by the Member**

14. In January 2015, Scotia Securities became aware of the conduct that is the subject of this Settlement Agreement after a Scotia Securities compliance officer identified a suspect signature on an account form submitted by the Respondent.

15. As part of its investigation into the Respondent's conduct, Scotia Securities reviewed additional trades processed by the Respondent, and identified the remainder of the signature falsifications that are the subject of this Settlement Agreement.

16. Scotia Securities contacted all of the clients for whom falsified signatures were identified, except for client HG who could not be reached, in order to determine whether the Respondent had engaged in any unauthorized trading activity in their accounts. None of the clients reported any concerns to Scotia Securities.

### **Additional Factors**

17. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in this Settlement Agreement.

18. There is no evidence of client loss.

19. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

20. 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**

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 23<sup>rd</sup> day of November, 2016.

“David Lawrence Hennessey”  
\_\_\_\_\_  
David Lawrence Hennessey

“NB”  
\_\_\_\_\_  
Witness – Signature

NB  
\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”  
\_\_\_\_\_  
Shaun Devlin  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – Enforcement

**Schedule “A”**

**Order**

**File No. 201697**



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**Re: David Lawrence Hennessey**

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**ORDER**

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**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 David Lawrence Hennessey (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 2015 and February 2015, the Respondent falsified the signatures of 5 clients on 10 account forms, 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 be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of 6 months from the date of the Settlement Hearing, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- 2) the Respondent shall pay costs in the amount of \$1,000 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, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all 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]