



**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: Robert Douglas Johnston**

Heard: November 5, 2019 in Winnipeg, Manitoba  
Decision: November 5, 2019  
Reasons for Decision: November 5, 2020

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Richard L. Yaffe, Q.C.  
James Samanta  
Greg Wiebe

Chair  
Industry Representative  
Industry Representative

Appearances:

Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Robert Douglas Johnston	)	Respondent, by teleconference
	)	
	)	

## I. INTRODUCTION

1. By Notice of Hearing dated May 9, 2019, a hearing panel (the “Hearing Panel”) of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened in Winnipeg, Manitoba on November 5, 2019 for a settlement hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of Robert Douglas Johnston (the “Respondent”). The Respondent attended by teleconference.

2. Staff of the MFDA (“Staff”) made the following submissions:

3. Staff entered into a settlement agreement dated June 27, 2019 (the “Settlement Agreement”) with the Respondent in which the Respondent admitted the following violations of the By-laws, Rules or Policies of the MFDA:

- a) Between August 2014 and April 2015, the Respondent obtained, possessed, and used to process transactions, 7 pre-signed account forms in respect of 4 clients, contrary to MFDA Rule 2.1.1;
- b) Between October 2012 and February 2016, the Respondent altered and used to process transactions, 14 client forms in respect of 12 clients, by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- c) Between September 2010 and March 2016, the Respondent:
  - i. directed his assistant, for whom he was responsible, to falsely indicate that she had witnessed client signatures on two Limited Trade Authorization forms; and
  - ii. submitted one client Limited Trading Authorization form to the Member for processing that did not meet the Member’s signature verification requirements,

thereby failing to comply with the Member’s policies and procedures, contrary to MFDA Rules 2.5.1, 1.1.2, and 2.1.1.

4. The facts, as agreed upon by the parties, are set out in paragraphs 5 – 21 below:

## **Agreed Facts**

5. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) since November 2007.
6. From May 2010 to September 2016, the Respondent was registered in Manitoba as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life"), a Member of the MFDA. The Respondent resigned from Sun Life on September 10, 2016.
7. Since October 6, 2016, the Respondent has been registered in Saskatchewan as a dealing representative with Sterling Mutuals Inc., a Member of the MFDA.
8. At all material times, the Respondent carried on business in the Thompson, Manitoba area.
9. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining or using pre-signed account forms.
10. Between August 2014 and April 2015, the Respondent obtained, possessed, and used to process transactions, 7 pre-signed account forms in respect of 4 clients.
11. The pre-signed account forms consisted of Pre-authorized chequing, Account Application, and Know-Your-Client forms.
12. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining or using falsified account forms.
13. Between October 2012 and December 2014, the Respondent altered and used to process transactions, 14 client forms in respect of 12 clients, by altering information on the account forms without having the clients initial the alterations.
14. The altered forms consisted of Pre-authorized chequing and Order ticket forms.
15. At all material times, Sun Life's policies and procedures required that its Approved Persons:

- a) meet face to face with a client when completing a Limited Trading Authorization form (“LTA”) and witness the client’s signature; or
- b) if sending an LTA by mail to a client, ensure the client’s signature is witnessed and guaranteed with a stamp by a bank, trust company, notary, or commissioner of oaths.

16. In September 2010, the Respondent directed his assistant, for whom he was responsible, to falsely indicate that she had witnessed client signatures on two LTA forms, when she did not meet in person with the client to witness the clients’ signatures. The Respondent then submitted the LTA forms to Sun Life for processing.

17. In March 2016, the Respondent submitted the faxed copy of a LTA form to Sun Life without ensuring that the client signature was witnessed and guaranteed with a stamp by the appropriate person, as required by Sun Life’s policies and procedures.

18. In February 2017, Sun Life identified one of the altered forms that are the subject of the Settlement Agreement during an onsite branch review. Sun Life subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining pre-signed and altered account forms that are the subject of the Settlement Agreement.

19. In January 2012, Sun Life placed the Respondent under close supervision for 12 months after it identified 12 pre-signed account forms in client files serviced by the Respondent.

20. On June 15, 2012, Sun Life issued a warning letter to the Respondent.

21. All the pre-signed and altered forms that are the subject of the Settlement Agreement were obtained, possessed, or used, after the Respondent was warned by Sun Life in June 2012.

### **Additional Considerations, Law and Analysis**

22. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

23. The Respondent stated that he is impecunious and unable to contribute any additional amounts toward a fine in this matter. The Respondent acknowledged that absent his limited ability to pay, it would have been appropriate for him to be subject to a penalty that included a greater fine due to the conduct that is the subject of the Settlement Agreement.

24. There is no evidence of any client loss or that the transactions were unauthorized.

25. By entering into the Settlement Agreement, the Respondent saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

26. The Respondent agreed to the following penalty:

- a) The Respondent shall be suspended 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 six months from the date of the settlement hearing, pursuant to section 24.1.1(e) of By-law No. 1;
- b) The Respondent shall pay a fine in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
- c) The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
- d) The Respondent shall in the future comply with MFDA Rules 1.1.2, 2.1.1 and 2.5.1; and
- e) The Respondent will attend the Settlement Hearing in person.

27. MFDA hearing panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

- i) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- ii) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the respondent as set out in the settlement agreement;
- iii) whether the settlement agreement satisfactorily addresses the issues of both specific and general deterrence with respect to the respondent and the industry, respectively;

- iv) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- v) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- vi) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- vii) whether the settlement agreement will foster confidence in the regulatory process itself.<sup>1</sup>

28. The protection of investors is considered by the MFDA to be the primary goal of securities regulation<sup>2</sup>. The goals of securities regulation also include fostering public confidence in the capital markets and the securities industry<sup>3</sup>. The penalties that are imposed must be sufficient to affirm public confidence in the regulation of the mutual fund industry, and to ensure deterrence.

29. There are a number of general principles that apply when imposing a penalty, and it is accepted practice that hearing panels should not interfere lightly in a negotiated settlement if the penalties agreed upon are within a reasonable range of appropriateness. In this regard, hearing panels frequently consider the following factors when determining whether a proposed penalty is appropriate:

- i) the seriousness of the allegations proved against a respondent;
- ii) a respondent's past conduct, including prior sanctions;
- iii) a respondent's experience and level of activity in the capital markets;
- iv) whether a respondent recognizes the seriousness of the improper activity;
- v) the harm suffered by investors as a result of a respondent's activities;
- vi) the benefits received by a respondent as a result of the improper activity;
- vii) the risk to investors and the capital markets in the jurisdiction, were a respondent to continue to operate in capital markets in the jurisdiction;

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<sup>1</sup> *Sterling Mutuals Inc. (Re)*, Hearing Panel of the Central Regional Council, File No. 200820, Decision and Reasons dated August 21, 2008.

<sup>2</sup> *Breckenridge (Re)*, Hearing Panel of the Central Regional Council, MFDA File No. 200718, Decision and Reasons dated November 14, 2007.

<sup>3</sup> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.).

- viii) the damage caused to the integrity of the capital markets in the jurisdiction by a respondent's improper activities;
- ix) 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;
- x) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- xi) previous decisions made in similar circumstances.<sup>4</sup>

30. The MFDA Sanction Guidelines are an additional source of guidance regarding the appropriate penalty in a given matter, and are designed to assist hearing panels in the fair and efficient imposition of sanctions in settled or contested disciplinary proceedings. The penalty types stated in the Sanction Guidelines are not mandatory or binding on a hearing panel, but rather are intended to provide a basis upon which discretion may be exercised consistently and fairly in like circumstances.

31. Staff submitted that in cases involving the type of misconduct in the present case, the following factors as set out in the Sanction Guidelines are relevant to the Hearing Panel's decision:

- i) general and specific deterrence;
- ii) public confidence;
- iii) seriousness of the allegations proved against the Respondent;
- iv) the Respondent's past conduct, including prior sanctions;
- v) the Respondent's recognition of the seriousness of the misconduct;
- vi) ability to pay; and
- vii) previous decisions made in similar circumstances.

32. In considering the facts of this case and the relevant and applicable principles, the Hearing Panel took into account the Respondent's experience in the industry, and the fact that the Respondent had previously been disciplined by the Member for the use of pre-signed forms. The Hearing Panel also took into account the fact that there was no harm to clients, and that the

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<sup>4</sup> *Breckenridge (Re)*, *supra*, at para. 77

Respondent did not receive any financial or other benefit as a result of his misconduct. Finally, the Hearing Panel took into consideration the Respondent's inability to pay the fines that the MFDA typically seeks for similar misconduct and, in particular, the acknowledgement by the Respondent in the Settlement Agreement that absent his limited ability to pay, it would have been appropriate for him to be subject to a penalty that included a greater fine due to the conduct that is the subject of the Settlement Agreement.

33. The Hearing Panel may accept or reject the recommended Settlement Agreement (section 24.4.3 of MFDA By-law No. 1).

34. We are satisfied that the penalty agreed upon is reasonable, that it does not clearly fall outside the reasonable range of appropriateness, and that the public's interest is served by the Settlement Agreement. We agree unanimously that the Settlement Agreement should be accepted.

**DATED** this 5<sup>th</sup> day of November, 2020.

“Richard L. Yaffe”

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Richard L. Yaffe, Q.C.  
Chair

“James Samanta”

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James Samanta  
Industry Representative

“Greg Wiebe”

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Greg Wiebe  
Industry Representative

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