



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: Menashe Keshet

Heard: August 21, 2014, in Toronto, Ontario
Reasons for Decision: September 3, 2014

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Fred Kaufman, C.M., Q.C.	Chair
Robert Christianson	Industry Representative
Colleen Waring	Industry Representative

Appearances:

H.C. Clement Wai)	Enforcement Counsel, Mutual Fund Dealers
)	Association of Canada
)	
Menashe Keshet)	In Person
)	
)	

The Facts

1. The facts of this case are not in dispute. They are set out in detail in paragraphs 6 to 20 of the Settlement Agreement which was signed between Staff of the MFDA (“Staff”) and Menashe Keshet (the “Respondent”) on May 28, 2014 and which forms part of the record:

Registration History

6. The Respondent has been registered in the mutual fund industry since January 1995.

7. From December 5, 1995 to November 2012, the Respondent was registered in Ontario as a mutual fund salesperson/dealing representative with De Thomas Financial Corp. (“De Thomas”), a Member of the MFDA

8. Since November 2012, the Respondent has been registered in Ontario as a dealing representative with FundEX Investments Inc. (“FundEX”), a Member of the MFDA.

9. At all material times, the Respondent carried on business from a branch office of De Thomas located in North York, Ontario.

Pre-Signed Forms

10. At all material times, De Thomas’ policies and procedures prohibited its Approved Persons from using pre-signed forms, including photocopies of pre-signed forms, to conduct business.

11. In or around May 2012, the Respondent submitted two trade forms to De Thomas which contained a photocopy of the client’s signature. De Thomas reviewed the client’s file and found six additional trade forms which contained a photocopy of the client’s signature.

12. As a result of these findings, De Thomas selected and reviewed 15 client files maintained by the Respondent. De Thomas selected the files for the client accounts which contained the most trading activity and/or the largest dollar value trades. Through its review, De Thomas found approximately 80 account forms in relation to 11 client files that contained photocopied client signatures.

13. On May 23, 2013, Staff of the MFDA interviewed the Respondent. During the interview, the Respondent admitted that between October 2008 to December 2011 he used 85 account forms in relation to 22 client accounts which contained a photocopy of the client's signature in order to process trades or update Know Your Client information.

14. The 85 client account forms used by the Respondent consisted of the following:

- (a) 38 Switch Order forms;
- (b) 27 Mutual Fund Trade Tickets;
- (c) 12 Client Update (Know Your Client) forms;
- (d) 4 Additional Purchase forms; and
- (e) 4 Redemption forms.

De Thomas' Response

15. After De Thomas detected the Respondent's use of photocopied client signatures in or around May 2012, De Thomas placed the Respondent, for a period of one year, under close supervision and imposed following terms and conditions on him:

- a) only original trading and Know Your Client forms could be submitted for review and processing
- b) all documentation had be completed in blue ink;
- c) upon submission of any document that required a client signature, the Respondent's Branch Manager and De Thomas' Head Office compliance

staff would review previous documents pertaining to the client's account to ensure that the document had not been photocopied;

- d) the Respondent's Branch Manager would conduct random reviews of at least three client files every three months;
- e) the Chief Compliance Officer and the Respondent's Branch Manager would conduct an examination and review of all of the Respondent's client files within three months; and
- f) the Respondent's commissions would be reduced by 10%.

16. The Respondent resigned in November 2012, approximately six (6) months after De Thomas imposed the terms and conditions set out above.

17. De Thomas sent letters to the clients serviced by the Respondent, which included an account transaction history that clients were asked to review to identify any inaccuracies or trading activity that they were unaware of. None of the clients reported any concerns to De Thomas in response to the letters.

18. There is no evidence that:

- a) the Respondent engaged in discretionary or unauthorized trading activity, or updated Know Your Client information without the knowledge or authorization of clients;
- b) the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner;
- c) clients suffered any financial harm as a result of the Respondent's conduct; and
- d) any clients have complained about the Respondent's conduct.

19. The Respondent states that, since the events described herein came to the

attention of De Thomas in May 2012, he has not used photocopied client signatures to conduct business at De Thomas or FundEX.

Contraventions

20. The Respondent admits that, between October 2008 and December 2011, he obtained, maintained and/or used to process trades and update Know Your Client information approximately 85 account forms in 22 client accounts which contained photocopies of client signatures, contrary to MFDA Rule 2.1.1.

The Proposed Penalties

The Respondent shall pay a fine of \$7,500, pursuant to s. 24.1.1(b) of By-law No. 1; and

The Respondent shall pay costs in the amount of \$2,500, pursuant to s. 24.2 of By-law No. 1.

Discussion

2. As MFDA Staff pointed out, pre-signed forms present a risk that they may be misused, and while it is clear that in the case now before us no harm befell any of the Respondent's clients, the potential was there and MFDA Rule 2.1.1 was breached. What, then, is the appropriate penalty?

3. The MFDA Penalty Guidelines suggest a minimum fine of \$5,000, with a possible suspension and, in egregious cases, a permanent prohibition. An order to write or rewrite appropriate industry courses may also be ordered.

4. In assessing punishment, a number of factors must be considered: the relative gravity of the offence, harm to clients, deterrent effect on others who might be tempted to act in a similar manner, a respondent's past record, did he or she profit from the breaches alleged, his or her

assistance in the investigation, the likelihood of recidivism.

5. In the present case, the Respondent has a clean record. He co-operated fully with the investigators, there were no client complaints, and he accepted full responsibility for his conduct. And, at the hearing, he expressed remorse. His actions did not provide him with additional profits, so no disgorgement order is required.

6. Two cases are of particular guidance. In *Re: Rattenbury*, [2012] File No. 201219, a case involving 63 pre-signed trade instruction forms, a hearing panel of the Prairie Regional Council imposed a fine \$6,250, costs of \$2,500, and ordered the respondent to write or rewrite certain examinations. In *Re: Page*, [2012] File No.201220, also a case involving pre-signed forms (although a much smaller number than in *Rattenbury* or the present case) the fine, also imposed by a panel of the Prairie Regional Council, was the minimum suggested by the Guidelines -- \$5,000 – and an order for costs of \$2,500.

Negotiated Settlements

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 appropriate: *Re: Professional Investments (Kingston) Inc.*, [2009] File No. 200836 (Ontario Regional Council).

8. In the case now before us, the negotiated settlement is fair and appropriate, and it was for the reasons set out above that the panel, at the conclusion of the hearing approved the Agreement.

DATED this 3rd day of September, 2014.

“Fred Kaufman”

The Hon. Fred Kaufman, C.M., Q.C.
Chair

“Robert Christianson”

Robert Christianson
Industry Representative

“Colleen Waring”

Colleen Waring
Industry Representative

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