



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: Daniel Rosaire Roy

Heard: January 31, 2019 in Toronto, Ontario

Decision: January 31, 2019

Reasons for Decision: February 28, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart

Edward V. Jackson

Guenther W. K. Kleberg

Chair

Industry Representative

Industry Representative

Appearances:

Brendan Forbes

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Enforcement Counsel for the Mutual Fund

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Dealers Association of Canada

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Ashley Thomassen

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Counsel for the Respondent

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Daniel Rosaire Roy

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Respondent, in person

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I. INTRODUCTION

1. Proceedings were commenced by the Mutual Fund Dealers Association of Canada (“MFDA”) against Daniel Rosaire Roy (the “Respondent”), by Notice of Settlement Hearing, dated October 9, 2018, indicating that a settlement hearing would be held on January 31, 2019 to consider a settlement agreement entered into between staff of the MFDA (“Staff”) and the Respondent (the “Settlement Agreement”).

2. At the Settlement Hearing on January 31, 2019 the Hearing Panel considered the Settlement Agreement and, at the conclusion of the hearing, decided to accept it. These are our reasons for that decision.

II. RESPONDENT’S ADMITTED CONTRAVENTIONS

3. The Respondent admitted to the following violations of MFDA Rule 2.1.1:

- a) between December 2008 and March 2017, he obtained, possessed and, in some instances, used to process transactions, 73 pre-signed account forms in respect of 34 clients; and
- b) between December 2008 and March 2017, he altered 5 account forms in respect of 6 clients by altering information on the forms without having the clients initial the alterations.

III. AGREED SANCTION

4. Staff and the Respondent agreed that the Respondent shall pay the following amounts upon acceptance of the Settlement Agreement:

- a) a fine in the amount of \$20,000 pursuant to s. 24.1.1(b) of MFDA By-law No.1; and
- b) costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1.

5. The Respondent also agreed in the future to comply with MFDA Rule 2.1.1.

IV. AGREED FACTS

Registration History

6. Since 1987, the Respondent has been registered as a mutual fund salesperson. Since 2008, he has been registered in Ontario with FundEX Investments Inc. (“FundEX”), a Member of the MFDA. Since 2009, he has also been registered as a mutual fund salesperson in Quebec.

Pre-Signed Account Forms

7. Between December 2008 and March 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 73 pre-signed account forms in respect of 34 clients. The pre-signed account forms included order forms, Know-Your-Client forms and new account application forms.

8. In January 2009, after FundEX identified 2 pre-signed account forms in client files serviced by the Respondent, he signed an Acknowledgement and Undertaking not to use pre-signed account forms in the future.

Altered Account Forms

9. Between December 2008 and March 2017, the Respondent altered information on 5 account forms in respect of 6 clients without having the clients initial the alterations. The altered account forms included order forms, systematic instruction forms and new account application forms.

FundEX’s Investigation

10. On March 28, 2017, during a branch audit, FundEX identified the subject account forms.

11. Between April 26, 2017 and September 8, 2017, FundEX placed the Respondent on strict supervision.

12. On May 10, 2017, FundEX sent a letter to all clients whose accounts the Respondent serviced to determine whether the Respondent engaged in unauthorized trading. No concerns were identified.

13. On September 8, 2017, FundEX issued a letter to the Respondent that cautioned him against any future breach of its policies and procedures.

V. CONSIDERATIONS

14. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily: whether it was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct, the MFDA Sanction Guidelines and prior cases; and whether it would serve as a specific and general deterrent.

15. We found that obtaining and sometimes using 73 pre-signed account forms in respect of 34 clients and altering 5 account forms in respect of 6 clients constituted a serious breach of MFDA Rule 2.1.1. That rule requires Approved Persons to: deal fairly, honestly and in good faith with clients; observe high standards of ethics in the conduct of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

16. Using pre-signed account forms and altering account forms can, among other things, affect the integrity of account documents, impede the ability of the Member to supervise the accounts and facilitate other misconduct such as unauthorized trading and misappropriation.

17. We considered as aggravating factors that.

- a) the Respondent had been warned about the use of pre-signed forms in January 2009 and had undertaken not to use them in the future; and
- b) some of the misconduct occurred after the MFDA had issued MFDA Bulletin #0661-E, dated October 2, 2015, warning the industry against pre-signed forms and alteration of forms.

18. We considered several mitigating factors in reaching our decision, including that:

- a) there was no evidence that the Respondent benefitted from his misconduct beyond commissions or fees he would ordinarily be entitled to had the transactions been carried out properly;
- b) there was no evidence of client loss or lack of authorization for the underlying transactions;
- c) the Respondent had not previously been the subject of MFDA disciplinary proceedings; and
- d) by entering into the Settlement Agreement, the Respondent saved the MFDA the time and expense of a full hearing.

19. The proposed sanction fell within the range of sanctions imposed by hearing panels in previous cases presented to us that involved similar circumstances.

VI. CONCLUSION

20. We concluded that the agreed sanction, including costs, was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct, MFDA guidance and precedents and it would serve as a specific and general deterrent. We decided in the circumstances it was appropriate to accept the Settlement Agreement and we did so.

DATED this 28th day of February, 2019.

“Joan Smart”

Joan Smart
Chair

“Edward V. Jackson”

Edward V. Jackson
Industry Representative

“Guenther W. K. Kleberg”

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