



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: Albert Hoo-Cheong Koo

Heard: January 25, 2021 by electronic hearing in Toronto, Ontario

Decision: January 25, 2021

Reasons for Decision: March 12, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart
Brigitte Geisler
Joseph Yassi

Chair
Industry Representative
Industry Representative

Appearances:

Brendan Forbes)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
A. Benson Forrest)	Counsel for the Respondent
)	
Albert Hoo-Cheong Koo)	Respondent
)	
)	

I. INTRODUCTION

1. By Notice of Settlement Hearing, dated December 1, 2020, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced proceedings against Albert Hoo-Cheong Koo (the “Respondent”) indicating that an electronic hearing would be held on January 25, 2021, to consider whether the Hearing Panel should accept the settlement agreement, dated November 30, 2020 (the “Settlement Agreement”), entered into between the staff of the MFDA (“Staff”) and the Respondent.

2. At the Settlement Hearing on January 25, 2021, the Hearing Panel, after hearing submissions of counsel for the parties and considering the Settlement Agreement, decided to accept it. These are our reasons for that decision.

II. THE RESPONDENT’S ADMISSION OF CONTRAVENTIONS

3. The Respondent admitted that between February 2014 and February 2017, he altered and used to process transactions, 28 account forms in respect of 15 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

III. PROPOSED SETTLEMENT

4. Staff and the Respondent agreed to the following terms of settlement that require that the Respondent:

- a) pay a fine of \$12,000 in certified funds upon acceptance of the Settlement Agreement by the Hearing Panel, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) pay costs of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- c) be prohibited from acting as a branch manager or in any supervisory capacity for a Member of the MFDA for three months commencing on the date the Settlement Agreement is accepted, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- d) successfully complete the branch manager’s course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada prior to acting as a branch manager in the future, pursuant to s. 24.1.1(f) of MFDA By-law No. 1; and
- e) in the future comply with MFDA Rule 2.1.1.

IV. AGREED FACTS

Registration History

5. The Respondent has been registered in the securities industry since September 2004, and since January 2011, has been registered in Ontario as a dealing representative with Desjardins Financial Security Inc. (the “Member”), a Member of the MFDA.

6. From January 27, 2011 to April 26, 2019, the Member designated the Respondent as a branch manager.

Altered Account Forms

7. Beginning in June 2016, the Member’s policies and procedures required clients to initial or otherwise provide written authorization for any alterations to client documents after the document was signed by the client.

8. Between February 2014 and February 2017, the Respondent altered, and used to process transactions, 28 account forms in respect of 15 clients by altering information on the account forms without having the clients initial the alterations.

9. The altered account forms consisted of 21 Letters of Direction, four Trade Tickets, one Know-Your-Client Update Form, one Mutual Fund Application Form and one Tax Free Savings Account Application Form.

10. The alterations made by the Respondent included alterations to client income and net worth, fund information and investment amounts.

The Member’s Investigation

11. In December 2018, the Member conducted an audit of the client files maintained by the Respondent and identified the altered account forms that are the subject of the Settlement Agreement.

12. In January 2019, the Member sent letters to clients whose accounts the Respondent serviced, along with a two year transaction history, asking them to confirm that all the transactions within the transaction history were made pursuant to specific client instructions.

13. No clients responded to the Member with any concerns except for one client who initially raised a concern about one transaction, but subsequently indicated he had misunderstood the Member's inquiry and did not pursue the matter.

14. By February 2019, all affected clients had been provided with the subject account forms and had initialed the subject alterations.

15. On April 25, 2019, the Member placed the Respondent under close supervision and subsequently issued a warning letter to the Respondent in respect of the subject conduct. The Respondent continued under close supervision until the conclusion of the MFDA proceeding.

16. On April 30, 2019, the Respondent signed a Confirmation of Compliance Requirements with the Member wherein he acknowledged that it is prohibited to alter information on a signed document without client initials.

V. CONSIDERATIONS

Role of the Hearing Panel

17. Section 24.4.3 of MFDA By-law No. 1 provides that hearing panels may only accept or reject a settlement agreement.

18. It is generally accepted that a hearing panel will not lightly interfere with a settlement agreement reached between Staff and a respondent and will not reject it unless it views the penalty as clearly falling outside a reasonable range of appropriateness. See, for example, *Sterling Mutuals Inc. (Re)*, LNCMFDA 16 at para. 37.

19. 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 and previous MFDA cases; whether it would serve as a specific and general deterrent; and whether it was aligned with the MFDA's objectives to enhance investor protection and strengthen public confidence in the mutual fund industry.

Misconduct

20. MFDA Rule 2.1.1 requires, among other things, that Approved Persons deal fairly, honestly and in good faith with its clients, observe high standards of ethics and conduct in the

transaction of business and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

21. We found that, as admitted by the Respondent, he contravened MFDA Rule 2.1.1 when he altered information on 28 account forms without having the clients initial the alterations and used the forms to process transactions.

22. The Respondent's subject actions subsequent to June 2016 were also contrary to the Member's policies and procedures.

23. Altering account forms is serious misconduct as it can, among other things, negatively impact the integrity of account documents, destroy the audit trail, impede a Member's ability to supervise accounts and respond to client complaints and potentially allow for misuse such as unauthorized trading and misappropriation.

Sanction

24. In considering the proposed sanction, we regarded the following as aggravating factors:

- a) the Respondent had been registered in the securities industry for 10 years before the misconduct commenced and should have been aware of the rules;
- b) the Respondent's misconduct occurred while he was designated as a branch manager, in which role he should have been acting as a standard bearer in the industry; and
- c) some of the misconduct occurred after the MFDA had issued MFDA Bulletin #0661-E, dated October 2, 2015, in which the MFDA warned the industry against, among other things, altering account forms and advised that it would be seeking increased penalties in future such cases.

25. In reaching our decision on the sanction, we considered a number of mitigating factors, including that:

- a) there was no evidence that the Respondent received any financial benefit from the misconduct beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner;
- b) there was no evidence of client loss or lack of authorization;

- c) the Respondent has not previously been the subject of MFDA disciplinary proceedings;
- d) the Member took action to address the misconduct, including placing the Respondent under close supervision and requiring that he sign a Confirmation of Compliance Requirements; and
- e) by entering into the Settlement Agreement, the Respondent accepted responsibility for his misconduct and saved the MFDA the time, resources and expenses associated with conducting a full hearing.

26. In our view, the meaningful fine, together with the three month suspension from acting in a supervisory capacity, should deter the Respondent from engaging in similar conduct in the future.

27. The sanction should also serve the goal of general deterrence by sending a message to others in the mutual fund industry that the subject conduct will not be tolerated and that those who engage in similar conduct will face significant penalties.

28. The proposed penalty and costs were within a reasonable range of appropriateness, having regard to other decisions made by MFDA hearing panels arising out of settlements in somewhat similar circumstances, including those set out below. The first three cases involved altered account forms or both altered and pre-signed forms. The latter two cases involved branch managers who had obtained, possessed and in some instances used pre-signed account forms. The fines imposed ranged from \$10,000 to \$12,500, and in each case costs of \$2500 were imposed. In the branch manager cases, suspensions from acting as branch manager were also imposed of three months in the first case and six months in the second.

Villegas (Re), [2019] Hearing Panel of the Prairie Regional Council, MFDA File No.201872, Reasons for Decision dated March 12, 2019

Beausoleil (Re), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201913, Reasons for Decision dated June 10, 2019

Scholes (Re), [2019] Hearing Panel of the Pacific Regional Council, MFDA File No. 201882, Reasons for Decision dated January 29, 2019

Bast (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201956, Reasons for Decision dated October 22, 2019

Blake (Re), [2018] Hearing Panel of the Ontario Regional Council, MFDA File No. 201873, Reasons for Decision dated December 7, 2018.

VI. CONCLUSION

29. We concluded that the proposed sanction was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's conduct and previous MFDA cases. It should serve as a specific and general deterrent. We were also of the view that it was aligned with the MFDA's regulatory objectives. Accordingly, we decided to accept the Settlement Agreement.

DATED this 12th day of March, 2021.

"Joan Smart"

Joan Smart
Chair

"Brigitte Geisler"

Brigitte Geisler
Industry Representative

"Joseph Yassi"

Joseph Yassi
Industry Representative

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