



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: Kimberly Ann Ryan

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:

Alan Melamud

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Enforcement Counsel for the Mutual Fund

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Dealers Association of Canada

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Maureen Doherty

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Counsel for the Respondent

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Kimberly Ryan

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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 (the “MFDA”) against Kimberly Ann Ryan (the “Respondent”), by Notice of Settlement Hearing, dated December 14, 2018, indicating that a hearing would be held on January 31, 2019 to consider whether to accept the 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 January 5, 2012 and February 8, 2015, she obtained, possessed, and used to process transactions, 2 pre-signed account forms in respect of 3 clients;
- b) between December 3, 2012 and March 23, 2016, she altered and used to process transactions, 18 account forms in respect of 15 clients by altering information on the account forms without having the clients initial the alterations; and
- c) on or about February 26, 2015, she attached the signature page of an account form previously signed by a client to a new account form to process a transaction.

III. AGREED SANCTION

4. Staff and the Respondent agreed to the following sanction:

- a) the Respondent shall pay a fine in amount of \$15,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
 - i. \$2,500, in certified funds, upon acceptance of the Settlement Agreement;
 - and

- ii. \$2,083.35, in certified funds, on or before the last business day of each of the first, second, third, fourth, fifth and sixth months' following the acceptance of the Settlement Agreement; and
- b) the Respondent shall pay costs in the amount of \$2,500, in certified funds upon acceptance of the Settlement Agreement, 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 January 31, 2011, the Respondent has been registered in Ontario as a Dealing Representative with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life"), a member of the MFDA.

Pre-Signed Account Forms

7. At all material times, Sun Life's policies and procedures prohibited Approved Persons from obtaining and using pre-signed forms, and stated that all forms must be duly executed after all information on a form has been properly completed.

8. Between January 5, 2012 and February 8, 2015, the Respondent obtained, possessed, and used to process transactions, 2 pre-signed account forms, consisting of a mutual fund application form and an education savings plan form, in respect of 3 clients.

Altered Account Forms

9. Between December 3, 2012 and March 23, 2016, the Respondent altered and used to process transactions, 18 account forms in respect of 15 clients by altering information on the account forms without having the clients initial the alterations. Those forms consisted of Know-Your-Client forms, mutual fund application forms, limited trade authorization forms and transfer authorization forms.

Re-used Signature Page

10. On or about February 26, 2015, the Respondent attached the signature page of a previously signed account transfer authorization form to a new account form to process a transaction.

Sun Life's Investigation

11. On or around May 1, 2017, during a file review, Sun Life detected some of the subject altered account forms in the Respondent's files. As a result, Sun Life conducted a review on or around June 6, 2017, which revealed additional pre-signed, altered and re-used account forms, which together are the remaining forms that are the subject of the Settlement Agreement.

12. Sun Life sent letters to all clients serviced by the Respondent to determine whether the Respondent had engaged in unauthorized trading. No clients reported any concerns.

13. On May 19, 2017, Sun Life placed the Respondent under close/enhanced supervision for 12 months, which included a bi-weekly audit of client paperwork.

V. CONSIDERATIONS

14. Section 24.4.3 of MFDA By-law No. 1 provides that hearing panels may only accept or reject a settlement in its entirety and it is generally accepted that hearing panels will not lightly interfere in a negotiated settlement reached between Staff and a respondent. See, for example, *Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16 at para. 37.

15. 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 previous cases; and whether it would serve as a specific and general deterrent.

16. We found that the Respondent's conduct outlined in paragraphs 8 to 10 above constitutes a serious breach of MFDA Rule 2.1.1, and at least the conduct outlined in paragraph 8 was contrary to her Member's policies and procedures. The subject MFDA rule requires that Approved Persons deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct

in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

17. In each case of the Respondent's misconduct there was a failure by the Respondent to ensure that clients authorized and signed the account forms after all instructions had been received and the forms completed. Such misconduct can, among other things, affect the integrity of account documents and impede the ability of a Member to supervise accounts, and has the potential to facilitate other abuse, such as unauthorized trading and misappropriation.

18. We considered as an aggravating factor that the Respondent altered some forms after the MFDA had issued MFDA Bulletin #0661-E, dated October 2, 2015, reminding Approved Persons that "Signature Falsification", which is stated to include altering forms without the client initialing the change, is not permissible under MFDA Rules and that the MFDA would be seeking increased penalties in upcoming cases involving signature falsification.

19. There were several mitigating factors we considered in reaching our decision, including that:

- a) there was no evidence that the Respondent benefitted from the misconduct, other than the usual commissions and fees;
- b) there was no evidence that the transactions processed by the Respondent pursuant to the subject account forms were unauthorized or caused any client loss;
- c) the Respondent had not previously been subject to any MFDA disciplinary proceedings; and
- d) by entering into the Settlement Agreement, the Respondent accepted responsibility for her actions and saved the MFDA the time and expense of a full hearing.

20. We also noted that the Respondent had been subject to enhanced supervision by Sun Life for a year.

21. We are of the view that a \$15,000 fine is significant enough to make it clear to the Respondent and others in the industry that this kind of misconduct is serious.

22. The proposed sanction was within a reasonable range of appropriateness in relation to previous decisions made by MFDA panels in similar circumstances.

VI. CONCLUSION

23. 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 that it would serve as a specific and general deterrent. We decided 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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