



**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: Nadine Wighton**

Heard: January 30, 2020 in Toronto, Ontario

Decision: January 30, 2020

Reasons for Decision: February 19, 2020

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC  
Guenther W.K. Kleberg  
Kenneth P. Mann

Chair  
Industry Representative  
Industry Representative

Appearances:

Lyla Simon	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Maureen Doherty	)	Counsel for the Respondent
	)	
	)	
Nadine Wighton	)	Respondent, in person
	)	
	)	

## **Background**

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on January 30, 2020. The full Settlement Agreement, dated January 27, 2020, (“Settlement Agreement”) entered into between Staff of the MFDA and Nadine Wighton (“Ms. Wighton” or the “Respondent”) is available on the MFDA website. Ms. Wighton was represented by counsel and appeared in person.
2. The Hearing Panel accepted the proposed Settlement Agreement at the conclusion of the January 30, 2020 hearing, with reasons to follow. These are our reasons for the decision.
3. From August 31, 1998 to June 9, 2017, at which date the Respondent was terminated in connection with the events described in these reasons, she was registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson) with Scotia Securities Inc. (“Scotiabank” or the “Member”), a Member of the MFDA. At all material times, the Respondent carried on business from a branch located in Hamilton, Ontario.
4. The Respondent is not currently registered in the securities industry in any capacity, but remains employed with Scotiabank as a small business advisor.

## **Misconduct**

5. The allegations in the News Release dated January 29, 2020, state that the Respondent:
  - a) between December 24, 2009 and February 12, 2013, failed to conduct adequate due diligence to learn, or accurately record on account documents, Know-Your-Client information for client X, contrary to MFDA Rules 2.2.1 and 2.1.1;
  - b) between December 24, 2009 and February 12, 2013, arranged for client X’s account statements to be delivered to a third party without taking adequate steps to determine whether client X had authorized and was aware of the address change, thereby failing to ensure that the confidential information relating to client X was maintained in confidence, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.5.1, 2.10, and 1.1.2; and

- c) on January 26, 2011, accepted and acted upon trade instructions regarding two deposits and purchases in client X's investment account that the Respondent received from a third party who did not possess trading or signing authority over the investment accounts of client X, and submitted the trades for processing without obtaining authorization from client X, thereby engaging in unauthorized trading, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.5.1, 2.10, and 1.1.2.

6. In paragraph 39 of the Settlement Agreement, the Respondent admits the allegations set out in the previous paragraph.

7. A Notice of Hearing had been issued on May 17, 2019 with essentially the same allegations as set out in paragraph 5. A date for a hearing was set for January 28-30, 2020, but just prior to the hearing date the parties reached an agreement on the terms of settlement. The Hearing Panel approved the request of the parties that the time for notice of the present hearing be abridged.

### **The Facts**

8. The facts, which the Respondent agrees to, are set out in detail in paragraphs 10 to 33 of the Settlement Agreement.

### **Failure to Record Accurate KYC Information**

9. Client X's family operates a business. In or about December 2004, the Respondent started servicing the mutual fund accounts of client X and her extended family, including client X's father, siblings and other relatives. At all material times, the family were high net worth clients of the Member. The Respondent continued servicing the mutual fund accounts of client X until approximately November 2013.

10. From January 21, 2010 to February 12, 2013, the Respondent prepared Know-Your-Client ("KYC") update forms for client X's accounts by reproducing the client's KYC information from KYC forms on file from previous years, without meeting or speaking with the client to determine whether any KYC information had changed. During this period, the Respondent periodically

dropped off client X's KYC update forms and other account documents at the family business for signature, and later returned to collect the account documents.

11. Client X did not sign the account documents. When the respondent returned to collect the account documents, the documents had signatures on them. The Respondent assumed that they had been signed by the client, but did not take adequate steps to ensure that the KYC update forms were signed by the client.

12. Client X's KYC update forms indicated that client X had "expert" or "high" investment knowledge and investment experience. In fact, client X had "low" investment knowledge and limited investing experience.

### **Improper Disclosure of Confidential Client Information**

13. The Member generally sent client account statements to clients quarterly. Between December 24, 2009 and February 12, 2013, without the knowledge, authorization, or consent of client X, the Respondent recorded client X's address on file with the Member as that of the family business instead of client X's residential address. Consequently, client X's account statements were sent to the family business and not to client X herself.

### **Engaging in Unauthorized Trading**

14. On January 26, 2011, the Respondent received email instructions from MJ, an employee of the family business that instructed the Respondent to, among other things, process two deposits into and purchases for client X's accounts. MJ was not a co-account holder and did not have trading or signing authority over the investment accounts of client X. The Respondent did not communicate with client X to inform client X about the email that the Respondent had received from MJ or to obtain trading instructions from client X concerning the purchases that MJ had instructed the Respondent to process in the account of X.

15. The Respondent relied upon MJ's instructions and executed the two purchases in client X's accounts totaling approximately \$12,462, without the knowledge or consent of client X.

## Settlement Agreement

16. Staff and the Respondent agreed and consented to the following terms of settlement set out in paragraph 40 of the Settlement Agreement:

- a) the Respondent shall pay a fine in the amount of \$20,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.2.1 and 2.5.1; 2.10, 1.1.2, and 2.1.1; and
- d) the Respondent will attend in person on the date set for the Settlement Hearing.

## The Law

17. The obligation to “Know-Your-Client” and take instructions from your client is known by all members of the industry. As counsel for the MFDA stated in his submissions, citing *Re Badasha* 2015 LNCMFDA 57; *Re Wray* 2017 LNCMFDA 130; and *Re Gill* 2018 LNCMFDA 38:

“Previous MFDA Hearing Panels have held that where an Approved Person opens a client account, updates the client’s Know-Your-Client information and/or processes trades in the client’s account without communicating directly with the client, the Approved Person has violated the Know-Your-Client obligation in Rule 2.2.1 and the standard of conduct in Rule 2.1.1.”

18. The Panel in *Re Wray* stated at paragraph 32:

“In order to fulfill the Know-Your-Client obligation, an Approved Person is required to learn the essential facts about his or her client directly from the client. In the absence of a power of attorney, it is not sufficient to consult with a third party, including even the client’s spouse, for the purpose of obtaining Know-Your-Client information or trading instructions.”

19. Approved Persons also have an obligation to protect the confidentiality of clients’ information. As the Panel stated in *Re Roche* 2014 LNCMFDA 85 at paragraph 12: ‘Where confidential client information is released without the client’s consent, the client’s privacy interests are irrevocably compromised in respect of that disclosure and the Member and the

affected client cease to have control over where the client's confidential information resides, or may go next.'

20. Engaging in unauthorized trading is, of course, also improper. As counsel for the MFDA argued: "By accepting and acting upon trade instructions regarding two purchases in client X's investment account that the Respondent received from a third party who did not possess trading or signing authority, and submitting the trades for processing without obtaining authorization from client X, the Respondent engaged in unauthorized trading. As was stated in *Re Wallace* [2017 LNCMFDA 7 at paragraphs 24-25] discretionary trading "undermines the ability of a client to make decisions for and control his or her account" and is prohibited "because control over trading decisions must rest solely with the client at all times."

### **Acceptance of Settlement Agreement**

21. As stated above, the Hearing Panel accepted the terms of the Settlement Agreement. A Hearing Panel can either accept or reject a Settlement Agreement. It cannot modify it.

22. The totality of the Respondent's conduct in this case was serious. The Respondent did not conduct adequate due diligence to learn or accurately record on account documents Know-Your - Client information; improperly disclosed confidential client information; and engaged in unauthorized trading.

23. In mitigation, the Respondent started in the industry in 1998 and has not previously been the subject of MFDA disciplinary proceedings.

24. It is particularly important to note in the Respondent's favour that there was no misappropriation of funds and no client harm. Only one client was involved, and all the transactions consisted of making deposits and purchasing securities for client X's accounts. There were no redemptions. There was no financial benefit to the Respondent from her conduct.

25. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary proceeding.

26. The penalty is in line with the MFDA Sanction Guidelines and the cases cited to us. See *Re Gill* 2018 LNCMFDA 38 and *Re Wallace* 2017 LNCMFDA 7. The penalty in the present case of \$20,000 will provide specific deterrence to the Respondent and general deterrence to others.

27. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal affirmed the British Columbia Supreme Court's statement with respect to a settlement by the British Columbia Securities Commission at paragraph 49 of *British Columbia Securities Commission v. Seifert* [2006] BCJ No. 225, aff'd [2007] BCCA No. 484:

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.”

28. Hearing Panels should respect settlements worked out by the parties. A Hearing Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Hearing Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Hearing Panel.

29. As a Hearing Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: “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 appropriateness.” There are many similar statements by MFDA Hearing Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: “A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.” This is particularly so, we should add, when experienced counsel, as in the present case, have been the negotiators.

30. The penalty agreed to in this case clearly falls *within* “a reasonable range of appropriateness.”

31. For the above reasons we accepted the Settlement Agreement.

**DATED** this 19<sup>th</sup> day of February, 2020.

“Martin L. Friedland”

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Martin L. Friedland, CC, QC

Chair

“Guenther W.K. Kleberg”

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