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: Isaac Muhima**

Heard: November 29, 2018 in Toronto, Ontario
Decision: November 29, 2018
Reasons for Decision: February 7, 2019

# REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

| | |
|---|---|
| Martin L. Friedland, C.C., Q.C. | Chair |
| Cheryl A. Hamilton | Industry Representative |
| Jeff J. Page | Industry Representative |

Appearances:

| | | |
|---|---|---|
| Alan Melamud | ) | Counsel for the Mutual Fund Dealers Association of Canada |
| Isaac Muhima | ) | 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 Thursday, November 29, 2018. The full Settlement Agreement, dated August 2, 2018, entered into between Staff of the MFDA and Isaac Muhima (the "Respondent") is available on the MFDA website. The Respondent appeared in person and was not represented by counsel.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the November 29, 2018 hearing, with reasons to follow. These are our reasons for the decision.

3. Between March 2016 and August 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with BMO Investments Inc. ("BMO"), a Member of the MFDA. At all material times, the Respondent conducted business in the Kingston, Ontario, area.

4. On August 11, 2016, BMO terminated the Respondent's registration as a result of the conduct that is the subject of this Settlement Agreement. The Respondent is not currently registered in the securities industry in any capacity.

## Contraventions

5. The Respondent admits in paragraph 4 of the Settlement Agreement to the following violations of the By-laws, Rules or Policies of the MFDA:

a) on or about June 20, 2016, the Respondent signed the signature of a client on an account form, and submitted the account form for processing, contrary to MFDA Rule 2.1.1;

b) on or about June 20, 2016, the Respondent failed to comply with a Member directive to contact a client to review the suitability of the holdings in a client account, contrary to MFDA Rule 2.1.1; and

c) on or about June 20, 2016, the Respondent failed to use due diligence to learn the essential facts of the client when he completed Know-Your-Client information

without having met or discussed the information with the client, contrary to MFDA Rules 2.2.1 and 2.1.1.

**The Misconduct**

6. The details of the misconduct are set out in paragraphs 10 to 19 of the Settlement Agreement and will not be described in detail here. Each of the allegations involves conduct which is contrary to the rules of the MFDA.

7. In brief, the Respondent's branch compliance officer directed the Respondent to meet with client BS to review her investment objectives because a mutual fund in the client's Tax Free Savings Account showed a higher risk than she had put on the Know-Your-Client form and therefore was unsuitable.

8. Rather than contact client BS, as directed by the branch compliance officer, the Respondent completed an account amendment form and selected the account investment objective of "conservative balanced" (the form had previously said "fixed income") to align with the mutual fund held in Client BS's account so that it appeared suitable in respect of client BS's holdings. The Respondent signed the client's signature on the form. The Respondent submitted the form to the branch compliance officer for processing. The branch compliance office spotted an inconsistency between BS's signature on the new account form and previously signed account forms.

9. The Respondent admits that he signed client BS's signature. Hearing Panels have consistently held that signing a client's signature constitutes a contravention of the standard of conduct under MFDA Rule 2.1.1. That Rule requires that Members and 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.

10. Signing client's signatures adversely affects the integrity and reliability of the account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation. See *Re Price* 2011 CanLII 72458; and *Re Barnai* 2015LNCMFDA 17.

11. Such conduct is more serious than using pre-signed forms. Unlike pre-signed forms, where the client knows he or she is signing a blank or partially completed form, an account form on which the Approved Person has signed the client's signature can arise with or without the client's knowledge or consent.

12. The MFDA has been warning Approved Persons against signing client signatures for a number of years. See MFDA Staff Notice MN-0035, dated December 10, 2004; MFDA Staff Notice MSN-0066, dated October 31, 2007 (updated January 26, 2017); MDFDA Bulletin #0661-E, dated October 2, 2015.

13. The Respondent also admits that he failed to comply with the directive from his branch compliance officer to meet with client BS to review her investment objectives. As stated in *Re Franco* 2011 LNCMFDA 55 at paragraph 55:

> "The obligation of Approved Persons to comply with the policies and procedures of the Member that they are registered with is a cornerstone of the self-regulatory system. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined."

14. As many Hearing Panels have held, the Respondent's conduct, constituted a contravention of the standard of conduct set out in MFDA Rule 2.1.1. See *Re Price*, File No. 200814; *Re Irwin*, File No. 200915; and *Re Tonnies*, 2005LNCMFDA 7.

15. The Respondent also admits that he failed to use due diligence to learn the essential facts regarding client BS when he changed her "Know-Your-Client" information without having met or discussed the change with her, contrary to MFDA Rule 2.2.1.

**Terms of Settlement**

16. Staff and the Respondent agreed and consented to the following Terms of Settlement (see paragraph 5):

a) the Respondent shall pay a fine in the amount of $3,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

b) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA for a period of 1 year, pursuant to section 24.1.1(c), contrary to MFDA By-law No. 1;

c) the Respondent shall in the future comply with MFDA Rules 2.2.1 and 2.1.1; and

d) the Respondent will attend in person, on the date set for the Settlement Hearing.

**Acceptance of Settlement Agreement**

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

18. The conduct in the case is serious. Signing a client's signature is wrong. Disregarding the instructions of the Member is even more serious.

19. Although the Respondent had only recently become a Dealing Representative, he knew that his conduct was improper. Moreover, the Respondent engaged in the misconduct after the MFDA published MFDA Bulletin #0661-E in which Staff reminded Members and Approved Persons that signing a client's signature is not permissible under MFDA Rules and that counsel would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

20. There was, however, no evidence of client losses as a result of the improper conduct. There was also no evidence that the Respondent received any financial benefit from the misconduct besides commissions and fees that he would have received if the transactions had been properly carried out.

21. The exclusion from the industry for a year is a substantial penalty. The Respondent has now been out of the industry in any capacity since August 2016. This penalty provides a large measure of deterrence to the Respondent and others.

22. The penalty agreed upon is not out of line with the cases cited by counsel for the MFDA or with the new MFDA Sanction Guidelines that came into effect on November 15, 2018.

23. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a

settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

> "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."

24. Hearing Panels should respect settlements worked out by the parties. A 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 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 Panel.

25. A Settlement Agreement indicates a recognition of wrongdoing by the Respondent and also saves the MFDA the time, resources, and expense of a contested hearing.

26. As a 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 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."

27. The penalty agreed to in this case clearly falls within "a reasonable range of appropriateness."

28. For the above reasons the panel accepted the Settlement Agreement.

**DATED** this 7th day of February, 2019.

"Martin L. Friedland"
Martin L. Friedland, C.C., Q.C.
Chair

"Cheryl A. Hamilton"
Cheryl A. Hamilton
Industry Representative

"Jeff J. Page"
Jeff J. Page
Industry Representative

DM 654436