



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: Nancy Lebel

Heard: February 5, 2021, by electronic hearing in Grand-Sault, New Brunswick

Decision: February 5, 2021

Reasons for Decision: August 16, 2021

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Blair C. Fraser, Q.C.
Patrick Galarneau
Danielle Tétrault

Chair
Industry Representative
Industry Representative

Appearances:

Francis Roy)	Senior Enforcement Counsel for the Mutual
)	Funds Dealers Association of Canada
)	
)	
Gabrielle Tremblay)	Counsel for the Respondent
)	
)	
Nancy Lebel)	Respondent
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I. INTRODUCTION

1. This Reasons for Decision follows the Settlement Hearing that took place on February 5, 2021, in this matter. This case involved the following allegations:

- a) in August 2017, as a result of an error in the processing of a client's account resulting in an unexpected deferred sales charge in the amount of \$616.07 for the client, Nancy Lebel ("Respondent") indemnified the client by personally and fully reimbursing her for these fees without first informing Placements Financière Sun Life (Canada) Inc. ("Sun Life") or obtaining its prior consent, contrary to Sun Life's policies and procedures, and the requirements prescribed by Mutual Funds Dealers Association of Canada ("MFDA") Rules 2.1.4 and 2.1.1, and Policy No. 3;
- b) between September 26, 2013, and July 24, 2018, the Respondent obtained, possessed and, in some instances, used to process transactions, 24 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1;
- c) between September 28, 2009, and August 27, 2018, the Respondent altered and used to process transactions, 31 account forms in respect of 21 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- d) on June 22, 2017, the Respondent photocopied or scanned signature pages of account forms that had already been signed by a customer, and then used those copies or scans to complete 4 new forms for the client, contrary to MFDA Rule 2.1.1.

II. DOCUMENTS SUBMITTED AS SUPPORTING DOCUMENTATION

- a) Notice of Settlement Hearing;
- b) Presentation by the MFDA Staff; and
- c) Exhibit submitted for identification purposes only: Proposed Settlement Agreement.

III. DECISION

Employment

2. The Respondent has been registered in New Brunswick since January 1, 1995, and in Ontario since March 30, 2012, as a mutual fund salesperson (now referred to as a dealing representative) with Sun Life, in the Grand-Sault, New Brunswick area.

3. The Respondent still continues to work as a dealing representative with Sun Life.

IV. FACTS RELATING TO THE RESPONDENT'S MISCONDUCT

4. The Hearing Panel accepted the following evidence as facts in this case:
 - a) In August 2017, as a result of an error in the processing of a client's account resulting in an unexpected deferred sales charge in the amount of \$616.07 for the client, the Respondent indemnified the client out of her own pocket by personally and fully reimbursing the client for these fees, but without first informing or obtaining Sun Life's consent, contrary to Sun Life's policies and procedures and the requirements prescribed by MFDA Rules 2.1.4 and 2.1.1, and Policy No. 3.
 - b) On or around August 19, 2017, the Respondent noticed her error and issued a personal cheque of \$616.07 to the client to reimburse her for the unexpected sales charge. The evidence submitted, both written and verbal, demonstrates that there is no evidence of financial loss suffered by this client.
 - c) Between September 26, 2013, and July 24, 2018, the Respondent obtained, possessed and, in some instances, used to process transactions, 24 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1.
 - d) The pre-signed account forms included:
 - i. 4 investment instruction forms;
 - ii. 1 new account opening form;
 - iii. 6 KYC forms;
 - iv. 3 systematic exchange instruction forms;
 - v. 5 limited trading authorization forms; and
 - vi. 5 certificate of incumbency forms.
 - e) The evidence shows that there was no financial loss to the clients served by the Respondent or proof that the transactions were unauthorized, for which the Respondent obtained, possessed and, in some cases, used the 24 pre-signed account forms for the 13 clients.
 - f) Between September 28, 2009, and August 27, 2018, the Respondent altered and used to process transactions, 31 account forms in respect of 21 clients by altering information on the account forms without having the clients initial the changes;
 - g) The modified account forms included:
 - i. 16 investment instruction / account transfer forms;

- ii. 6 KYC forms;
 - iii. 3 new account opening forms;
 - iv. 2 limited trading authorization forms;
 - v. 2 systematic exchange instruction forms; and
 - vi. 2 signature forms for electronic requests.
- h) Among other things, the non-initialled alterations made by the Respondent included account numbers, the names and codes of mutual funds to be traded by clients, and mutual funds amounts to be bought or sold or transferred by clients.
 - i) The evidence shows that in respect of these account forms that were not initialled by the clients, there was no financial loss to the clients or proof that these transactions were unauthorized.
 - j) On June 22, 2017, the Respondent photocopied or scanned signature pages of a client's account forms that had already been signed by the client. The Respondent then used these signature pages to complete 4 new forms for the client. The evidence shows that the Respondent altered these signature pages to expedite the signing as the Respondent works in a rural area.
 - k) The affected account forms included 2 mutual fund trade order forms and 2 registered investment transfer authorization forms.
 - l) The Respondent submitted three of the four forms to Sun Life for processing.
 - m) The evidence shows that at the time of these transactions where the Respondent has photocopied or scanned the signature pages of this client's account forms, there was no financial loss to the Respondent's client or proof that the underlying transactions were unauthorized.

V. FACTS RELEVANT TO THE CHARGES

5. For a period of 6 months, beginning on September 5, 2018, the Respondent was placed under enhanced strict supervision by Sun Life and, during that time, all transactions processed by the Respondent valued at \$500 or more were reviewed and approved by the Sun Life's Investment Compliance staff before being processed.

6. Also, during this 6-month period, when the Respondent was under enhanced strict supervision, the Sun Life staff reviewed all documents and forms submitted by the Respondent where a client signature was required in order for Sun Life, before processing a transaction requested by the Respondent, to ensure that the documents and forms were fully completed, with

the original signature of the client, that no form previously submitted for processing by the Respondent was reused by the Respondent to execute a new trade, that all changes to documents or forms were initialled by clients and that the Respondent had prepared and maintained notes of her discussions with clients. The charges that were alleged against the Respondent were indeed dealt with assiduously during this period. Finally, during this same period of enhanced strict supervision, the Sun Life staff conducted quarterly branch audits during which Sun Life reviewed at least 5 client files processed by the Respondent for the purpose of identifying, among others, pre-signed and altered account forms.

7. Following this 6-month period of enhanced strict supervision, Sun Life placed the Respondent under close supervision for another 6-month period which ended on September 5, 2019.

8. In addition, the Respondent paid administrative costs of \$6,000 for the 6-month strict supervision period, plus \$2,000 for the 6-month close supervision period, for a total of \$8,000. Evidence shows that these amounts were paid for by the Respondent herself and not by Sun Life.

9. Furthermore, the Respondent stated, which was accepted by the Hearing Panel, that she also successfully completed the Branch Manager Course at her expense, and therefore at least part of this course dealt with the manner of properly completing forms.

10. The Hearing Panel also acknowledges that after learning of the violations identified below, Sun Life sent a letter to all clients served by the Respondent asking them to review their transaction summaries to ensure that all trade activities were in accordance with the instructions they gave to the Respondent and to report any inconsistencies to Sun Life. The evidence shows that no client reported any issues with the transactions made by the Respondent on behalf of those clients.

11. Evidence indicates that beyond commissions and fees that the Respondent would ordinarily be entitled to had the transactions been carried out in the proper manner, there is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above, with the exception of \$616.07, which was promptly paid to the client.

12. Evidence shows and the Hearing Panel accepts that the Respondent has never been the subject of MFDA disciplinary proceedings.

13. As well, evidence demonstrates that the Respondent has saved the MFDA the time, the resources, and expenses associated with conducting a full hearing of the allegations.

14. It should also be noted that the Respondent, who was represented by counsel, admitted all of the facts.

VI. MFDA RULES AND HEARING PANEL FINDINGS

15. Each Member and each Approved Person must be aware that conflicts of interest may arise between the interests of the Member or Approved Person and the interests of a client. When an Approved Person becomes aware of a real or potential conflict of interest, he or she must immediately notify the Member.

16. Each Member and each Approved Person of a Member shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

17. The Hearing Panel ruled that contrary to the requirements of Sun Life, as well as the requirements of MFDA's Policy No. 3 where the Respondent has reimbursed the client without prior notice to or consent of the Member or Sun Life, the Respondent has breached these requirements.

VII. PRE-SIGNED ACCOUNT FORMS ARE NEVER PERMITTED OR AUTHORIZED

18. The Respondent admits to having obtained, possessed and, in some instances, used to process transactions, 24 pre-signed account forms in respect of 13 clients. The Hearing Panel acknowledges that the MFDA has been warning mutual fund dealers and Approved Persons such as the Respondent, against the use of pre-signed account forms for a number of years. See:

Staff Notice MSN-0035 dated December 10, 2004: <https://mfda.ca/notice/msn-0035/>, Staff Notice MSN-0066 dated October 31, 2007 (Updated March 4, 2013, and January 26, 2017): <https://mfda.ca/notice/msn-0066/>, Bulletin #0661-E dated October 2, 2015: <https://mfda.ca/bulletin/bulletin0661-e/>.

19. Furthermore, MFDA Hearing Panels have consistently held that obtaining or using pre-signed account forms is a contravention of the expected standard of conduct under MFDA Rule 2.1.1. See:

Byce (Re), [2013] Hearing Panel of the Ontario Regional Council, MFDA File No. 201311, Panel Decision dated September 4, 2013: <https://www.canlii.org/en/ca/camfda/doc/2013/2013canlii62246/2013canlii62246.pdf>

Price (Re), [2011] Hearing Panel of the Ontario Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011: <https://www.canlii.org/en/ca/camfda/doc/2011/2011canlii72458/2011canlii72458.pdf>

20. The use of pre-signed account forms may adversely affect the integrity and reliability of account documents, lead to the destruction of the audit trail (and has a negative impact on Member

complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.)

21. Thus, the Hearing Panel concludes that there is therefore no excuse for the Respondent to ignore the prohibition to use or to rely on pre-signed account forms to transact business, as conducted by the Respondent. There is no evidence that the Respondent was not aware of these Staff Notices or Bulletins.

VIII. ALTERING FORMS IS NOT PERMISSIBLE

22. It should be noted that the prohibition against altering or modifying account forms exists regardless of the existence of the client's authorization or the reason for using this form. In fact, like pre-signed account forms, the MFDA had previously warned Approved Persons against altering forms for a number of years, and at least since 2004. See the following Staff Notices and Bulletins:

Staff Notice MSN-0035 dated December 10, 2004: <https://mfda.ca/notice/msn-0035/>, Staff Notice MSN-0066 dated October 31, 2007 (Updated March 4, 2013, and January 26, 2017): <https://mfda.ca/notice/msn-0066/>, Bulletin #0661-E dated October 2, 2015: <https://mfda.ca/bulletin/bulletin0661-e/>.

23. It should also be noted that MFDA Hearing Panels have consistently ruled that altering or modifying forms contravenes the expected standard of conduct prescribed by MFDA Rule 2.1.

Please note, for example, *Duffey (Re)*, [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201686, Panel Decision dated March 27, 2017: <https://www.canlii.org/en/ca/camfda/doc/2017/2017canlii20010/2017canlii20010.pdf>

24. The Hearing Panel acknowledges that the creation, possession or use of an altered form is considered a serious misconduct as it affects the integrity and reliability of account documents. The Hearing Panel acknowledges that this type of form alteration is one of the most serious violations of the standard of conduct prescribed by MFDA Rule 2.1.1. It should be noted that when a form has been altered by an Approved Person, the client may not be aware of the Approved Person's actions, but, in this case, there is no proof that the transaction was unauthorized but the evidence shows that it was authorized by the client.

IX. PENALTIES

25. The Settlement Agreement concluded between the parties, that is, between the MFDA and the Respondent, sets out the following penalty terms:

- a) The Respondent shall pay a fine of \$19,000 upon acceptance of this Settlement Agreement, pursuant to Section 24.1.1(b) of MFDA By-Law No. 1;
- b) The Respondent shall pay the costs incurred by MFDA in the amount of \$2,500 in certified funds upon acceptance of this Settlement Agreement pursuant to Section 24.2 of MFDA By-Law No. 1; and
- c) The Respondent shall in the future comply with MFDA Rules 2.1.4 and 2.1.1 and Policy No. 3.

26. Section 24.4.3 of MFDA By-Law No. 1 offers the Hearing Panel only two options regarding a settlement agreement: the Hearing Panel can only accept or reject the settlement agreement proposal. In this case, the Hearing Panel accepted the Settlement Agreement for the following reasons:

- a) It is reasonable and appropriate, having regard to the conduct of the Respondent as set out in this Decision, to accept the Settlement Agreement.
- b) Particularly, the Hearing Panel acknowledges that the Respondent admitted her errors, including the seriousness of having falsified a client's signature.
- c) Particularly, the Hearing Panel acknowledges that the falsification of the signature consisted in scanning a signature previously given to the Respondent and to scan it on a new consent form, but for which the transaction had been authorized by the client. However, this does not diminish the seriousness of the fault, but simply to provide a context to it.
- d) Furthermore, the Settlement Agreement is reasonable and appropriate as the Respondent has not received any financial benefit from engaging in the misconduct and there is no proof of loss by the client served by the Respondent or any proof that the transactions were unauthorized. It is about the failure of complying with well-defined principles and rules to ensure that the mutual fund industry can operate in an environment that inspires public confidence.
- e) Moreover, the Hearing Panel finds this agreement reasonable and appropriate as the Respondent had ultimately been assessed a financial penalty of \$29,500, taking into consideration a fine of \$19,000, costs of \$2,500 incurred by the MFDA and an amount of \$8,000 already paid by the Respondent as administrative costs regarding the fees required by Sun Life regarding the 12-month period of enhanced strict supervision and close supervision.

- f) The Hearing Panel finds that the sanctions against the Respondent as set out in the Settlement Agreement will act as a deterrent not only to the Respondent, but also to any other person who participates in the capital markets.
- g) The Hearing Panel also acknowledges that there are similar decisions, such as *Owen (Re)*, [2017] *supra*, *Mailloux*, 2019 Canlii 122239 and *Parlee*, 2019 Canlii 122241, which in some cases imposed higher fines.
- h) The Hearing Panel is also satisfied that some previous decisions are consistent with the Settlement Agreement of the parties in this matter.
- i) The Hearing Panel also notes that the Respondent also successfully completed the Branch Manager Course at her own expense.
- j) Finally, the Respondent has not previously been the subject of MFDA disciplinary proceedings and the Hearing Panel believes that this Settlement Agreement will ensure public confidence and that the Respondent will not repeat her actions.

DATED this 16th day of August, 2021.

“Blair C. Fraser”

Blair C. Fraser, Q.C.

Chair

“Patrick Galarneau”

Patrick Galarneau

Industry Representative

“Danielle Tétrault”

Danielle Tétrault

Industry Representative

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