



**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: Dong Hwan (Jack) Lee**

Heard: February 12, 2016 in Moncton, New Brunswick  
Reasons for Decision: January 16, 2017

**REASONS FOR DECISION**

Hearing Panel of the Atlantic Regional Council:

Edward W. Keyes  
Jason P. Downey  
Susan Nixon

Chair  
Industry Representative  
Industry Representative

Appearances:

Paul Blasiak

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Counsel for the Mutual Fund Dealers  
Association of Canada

Suzanne Kittell

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Counsel for the Respondent

1. As a result of a settlement agreement (the “Settlement Agreement”) entered into between the Mutual Fund Dealers Association (“MFDA”) and Dong Hwan (Jack) Lee (the “Respondent”), a Settlement Hearing was held on February 12, 2016 in Moncton, New Brunswick.

2. This Hearing Panel was constituted, pursuant to Section 24.4.3 of By-law No.1 of the MFDA Rules, to consider whether to accept the Settlement Agreement negotiated between Staff of the MFDA’s and the Respondent.

3. At the conclusion of the Settlement Hearing and after considering submissions of Counsel for the MFDA; hearing from counsel for the Respondent and on considering the terms of the Settlement Agreement, the Settlement Agreement was accepted by the Hearing Panel. These are our written reasons for doing so.

#### **THE SETTLEMENT AGREEMENT**

4. The Settlement Agreement is annexed to these Reasons for Decision as Schedule “A”.

5. Pursuant to the Settlement Agreement, the Respondent admits that on March 3, 2014 he falsified one client’s signature on a cheque in order to process a trade in the client’s account contrary to MFDA Rule 2.1.1.

6. The key portions of the Settlement Agreement entered into with the MFDA and the Respondent are as follows:

#### **II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

### **III. ACKNOWLEDGEMENT**

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration History**

6. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”), a Member of the MFDA, in New Brunswick since February 22, 2010 and Ontario since June 10, 2015.

7. At all material times, the Respondent conducted business in Moncton, New Brunswick.

#### **Falsification of Client’s Signature**

8. On March 3, 2014, the Respondent met with client YJ in order to process a contribution to client YJ’s Registered Retirement Savings Plan (“RRSP”) account. Client YJ provided the Respondent with the relevant account forms as well as a cheque for the investment in the amount of \$6,000. At the time, neither the Respondent nor client YJ realized that client YJ had neglected to sign the cheque. The Respondent subsequently

submitted the account forms and the cheque to his Branch Administrator at Sun Life for processing.

9. Later on March 3, 2014, the Branch Administrator returned the cheque to the Respondent and advised him that it was missing client YJ's signature. Within approximately 15 minutes of receiving the unsigned cheque from the Branch Administrator, the Respondent falsified client YJ's signature on the cheque and resubmitted it for processing.

10. The Branch Administrator was suspicious of the signature on the cheque and conveyed her concerns to the Financial Centre Manager who advised the Regional Compliance Officer. The Compliance Department also commenced an investigation.

11. On March 18, 2014, an onsite visit was completed by the Financial Centre Manager. The Respondent was forthcoming about his conduct.

12. In addition, in a written statement to Sun Life dated June 2014 and signed by the Respondent and client YJ, the Respondent admitted that he had falsified client YJ's signature on the cheque. The Respondent stated that he did this because March 3, 2014 was the RRSP contribution deadline date and he did not have enough time to meet with client YJ to obtain his signature on the cheque without missing the deadline. The Respondent also stated that prior to falsifying client YJ's signature, he had telephoned client YJ and had obtained his permission to sign his name on the cheque so as to give effect to client YJ's intention.

### **Additional Factors**

13. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

14. The signature falsification that the Respondent made on the cheque did not alter client YJ's investment intentions and there was no client complaint or client harm.

15. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above, beyond the commissions or fees he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

16. The Respondent cooperated with Sun Life's internal investigation into his conduct and has expressed remorse for his actions.

17. The Respondent received a written reprimand and was placed on a 6 month Market Conduct Watch as well as close supervision by Sun Life.

18. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

## **V. CONTRAVENTIONS**

19. The Respondent admits that, on March 3, 2014, he falsified one client's signature on a cheque in order to process a trade in the client's account, contrary to MFDA Rule 2.1.1.

## **VI. TERMS OF SETTLEMENT**

20. The Respondent agrees to the following terms of settlement:

(a) the Respondent shall pay a fine in the amount of \$4,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, payable in 4 installments of \$1,000 which shall be paid on or before the first business day of each month following acceptance of the Settlement Agreement by the Hearing Panel;

(b) the Respondent shall pay costs in the amount of \$1,500 pursuant to s. 24.2 of MFDA By-law No. 1, payable immediately upon acceptance of the Settlement Agreement by the Hearing Panel;

(c) if the Respondent fails to make any of the payments described in subparagraph (a) when the payments become due, then without further notice to the Respondent, the Respondent shall summarily be suspended from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member, until the full amount of the fine has been paid;

(d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and

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

## **VII. STAFF COMMITMENT**

21. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts or contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

## **IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

26. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

## **GENERAL PRINCIPLES ON THE ACCEPTANCE OF THE SETTLEMENT AGREEMENT**

7. A Hearing Panel, pursuant to s. 24.4.3 of MFDA By-law No. 1, has two options with respect to a settlement agreement; it can only accept or reject the settlement agreement.

8. At a settlement hearing the role of a Hearing Panel is fundamentally different than its role at a contested hearing. The often cited reasoning from the I.D.A. decision of *Milewski (Re)* succinctly sets out the role of the Hearing Panel at a settlement hearing:

We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel “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.”

*Milewski (Re)* [1999] I.D.A.C.D. No.17 at p. 10, Ontario District Council  
Decision dated July 28, 1999.

## **GENERAL CONSIDERATIONS ON THE ACCEPTANCE OF THE SETTLEMENT AGREEMENT**

9. It is clear from the jurisprudence emanating from the Courts and previous MFDA hearing panels that this Hearing Panel’s task is not to decide whether we would have arrived at the same decision as that reached by the parties in this case. Rather, it is our responsibility to determine whether the penalty agreed upon falls within a reasonable range of appropriateness having regard to the conduct of the Respondent. If the negotiated settlement maintains the integrity of the investment industry, it is our duty to accept it.

10. In deciding whether to accept or reject the proposed Settlement Agreement in this matter, we have taken into account the following considerations as set out by previous decisions of Courts and MFDA hearing panels:

- a) Whether acceptance of the Settlement Agreement would be in the public interest;
- b) Whether the Settlement Agreement is reasonable in proportion to the conduct of the Respondent as set out in the Settlement Agreement;
- c) Whether the Settlement Agreement addresses the issues of both specific and general deterrents;
- d) Whether the proposed Settlement Agreement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- e) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- f) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA; and

- g) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

*Professional Investments (Kingston) Inc. (Re)*, [2009] MFDA, Ontario Regional Council, File No. 200836, Hearing Panel Decision dated March 24, 2009 at page 9.

*Melvin Robert Penny (Re)*, [2009] MFDA, Atlantic Regional Council, File No. 200831, Hearing Panel Decision dated May 13, 2009, at page 8.

*Alden M. Kaley (Re)*, MFDA, Atlantic Regional Council, File No 200911, Hearing Panel Decision dated August 21, 2009, at page 6.

11. We have also considered the factors that previous Hearing Panels have stated should be considered in determining whether a penalty is appropriate. These factors include the following:

- a) The seriousness of the allegations proven against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience and level of activity in the Capital Market;
- d) Whether the Respondent recognizes that the conduct was improper and has demonstrated remorse;
- e) The harm suffered by investors as a result of the Respondent's conduct;
- f) The benefits received by the Respondent as a result of the improper activity;
- g) The risk to investors and the capital markets in the jurisdiction were the Respondent to continue to operate in the capital markets in the jurisdiction;
- h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) The need to determine whether not only those involved in the case being considered, but also any others participating in the capital markets engaged in a similar improper activity;
- j) The need to alert others to the consequences of inappropriate activity to those who are permitted to participate in the capital markets; and
- k) Previous decisions made in similar circumstances.

*Lamoureux (Re)*, [2002] A.S.C.D. No. 125 at para 11.

Re: *In the matter of Robert Roy Parkinson* [2005] MFDA Ontario Regional Council, File No. 200509, Hearing Panel Decision dated February 21, 2006, at pp 25-26.

*Alden M. Kaley* (Re), [2009] MFDA Atlantic Regional Council, File No. 200911, Hearing Panel Decision dated September 28, 2009 at page 7.

12. We have also been guided by the MFDA Penalty Guidelines (“the Guidelines”), which state the following in the introduction:

**Range is Guideline Only**

The penalty types and ranges stated in the Guidelines are not mandatory. The Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are intended to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances but are not binding on a Hearing Panel.

13. The Guidelines recommend that consideration be given to the following penalties for Approved Persons in similar cases involving the misconduct alleged in the present case:

a) **Standard of Conduct:**

- Fine: Minimum of \$5,000.
- Write or rewrite appropriate industry course
- Suspension.
- Permanent prohibition in egregious cases.

**Standard of Conduct**

14. Rule 2.1.1 of the MFDA Rules codifies the standard of conduct to which all Members and Approved Persons are held. It requires that Members and 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 refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

15. Rule 2.1.1 was drafted broadly to protect the public interest and has been applied to prohibit a large range of misconduct including misappropriation, forgery, falsification of client's signatures, preferring Approved Persons own interests when engaging in business dealings with clients, the possession of pre-signed forms and discretionary trading.

*Gary Alan Price (Re)*, [2011] MFDA Central Regional Council, File No. 200714, Hearing Panel Decision dated April 18, 2011 at page 24.

*John A. Moro (Re)*, [2007] MFDA Central Regional Council, File No. 200814, Hearing Panel Decision dated November 27, 2007.

*Leo Alexander O'Brien and David Baxter Snow (Re)*, [2008] MFDA Atlantic Regional Council, File No. 200809, Hearing Panel Decision dated November 25, 2008.

*Cory Edwin Griffiths (Re)*, [2010] MFDA Prairie Regional Council, File No. 200916, Hearing Panel Decision dated January 13, 2010.

*David George Rounthwaite (Re)*, [2012] MFDA Prairie Regional Council, File No. 201123, Hearing Panel Decision dated July 30, 2012.

## **The Seriousness of the Violations**

### **Falsification of Client Signatures**

16. Hearing Panels have consistently taken the view that the falsifying of a client's signature is a very serious occurrence, using the term "forgery" as opposed to "falsification" to describe such acts.

17. In *Bell (Re)*, [2005] I.D.A.C.D. No. 15, the Hearing Panel made the following comments on acts of forgery at para 35:

Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole. While there is no such thing as a "minor case" of forgery, we can distinguish between more and less egregious examples of forgery...Less egregious examples of forgery are distinguished by the absence of aggravating factors, which may be viewed obversely as the presence of mitigating factors.

18. In *Lamontagne (Re)* [2009] IIROC No. 6. para. 45, the Hearing Panel stated the following on forgery:

Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry...forgery often attracts severe sanctions. While there is no such thing as a 'minor case' of forgery, Hearing panels may distinguish between more or less egregious examples of forgery.

19. Acts of falsification (forgery) which are performed without the client's knowledge, or resulted in loss or disadvantage to the member or client, will be treated as a more serious form of misconduct. Falsification that occurs with the knowledge or approval of the client that is done to give effect to a client's instructions, will generally be considered to be less serious misconduct.

*Barnai (Re)*, [2015] MFDA File No. 201325

20. The MFDA penalty guidelines suggest that in matters dealing with forgery, in almost all cases a permanent prohibition is an appropriate penalty. As the Hearing Panel in *Bell (Re)*, *supra*, paragraph 17, points out however, mitigating factors can have the effect of categorizing a forgery as a less egregious one.

### **CONSIDERATIONS IN THE PRESENT CASE**

21. In the case of the forgery effected by the Respondent in this matter, we have considered the following to be mitigating factors that would categorize the Respondents single act of forgery as a less egregious one:

- a) The falsification (forgery) of the clients signature was done to give effect to client's instructions;
- b) There is no evidence of client harm;

- c) The Respondent did not receive any financial benefit from his misconduct beyond the fees and commissions he would ordinarily be entitled to receive had the transaction been carried out in the proper manner;
- d) The proposed penalties stated in the Settlement Agreement provide not only specific deterrence to the Respondent but general deterrence to the industry signaling that signature falsification (forgery) will not be tolerated by the MFDA nor the mutual fund industry;
- e) Prior to the investigation there were no MFDA disciplinary proceedings against the Respondent;
- f) The Respondent, by admitting his responsibility and agreeing to the settlement, has saved the MFDA the time and expense of conducting a full disciplinary proceeding;

22. Under the terms of the Settlement Agreement the penalties agreed to between the parties are as follows:

- i) The Respondent shall pay a fine in the amount of \$4,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 payable in 4 installments of \$1,000 which shall be paid on or before the first business day of each month following acceptance of the Settlement Agreement by the Hearing Panel; and
- ii) The Respondent shall pay costs in the amount of \$1,500 pursuant to s. 24.2 of MFDA By-law No. 1 payable immediately upon acceptance of the Settlement Agreement by the Hearing Panel.

23. The Hearing Panel agrees that the penalties proposed in the Settlement Agreement are consistent with those issued in previous MFDA decisions under similar circumstances.

*Leung (Re)*, [2015] MFDA Central Regional Council, File No. 201555, Hearing Panel Decision dated January 25, 2016.

*Foley (Re)*, [2015] MFDA Central Regional Council, File No. 201547, Hearing Panel Decision dated November 26, 2015.

24. After considering the submissions and upon reviewing the relevant authorities, in our opinion the Settlement Agreement negotiated between the parties is in keeping with the purpose of the MFDA Rules that are intended to enhance investor protection and to promote public confidence in the Canadian Mutual Fund Industry.

25. We believe that the penalties provided for in the Settlement Agreement are within the range of reasonableness under the circumstances; will specifically deter the Respondent, Mr. Lee, and will also deter others from engaging in similar misconduct thereby protecting the investing public and fostering confidence in the Canadian Mutual Fund Industry.

26. After considering all of the above, we unanimously agree that the Settlement Agreement reached in this case was reasonable in the circumstances; is in the public interest and is hereby accepted by this Hearing Panel pursuant to Section 24.4.3 of the MFDA By-law No. 1.

**DATED** this 16<sup>th</sup> day of January, 2017.

“Edward W. Keyes”

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Edward W. Keyes  
Chair

“Jason P. Downey”

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Jason P. Downey  
Industry Representative

“Susan Nixon”

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Susan Nixon  
Industry Representative