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: Einar Torben Dahlin Lisborg

Heard: April 8, 2016, in Vancouver, British Columbia
Reasons for Decision: April 26, 2016

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield	Chair
Cecilia Macharia	Industry Representative
Holly Millar	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
Einar Torben Dahlin Lisborg	)	In Person

1. On April 8, 2016, after hearing representations from counsel for the Mutual Fund Dealers Association of Canada (the "MFDA"), we approved a Settlement Agreement concluded on April 8, 2016 between the MFDA and Einar Lisborg (the "Respondent"). The Respondent made no submissions at the hearing.

2. The Order we approved provides that:

(a) The Respondent shall be prohibited from conducting securities-related business in any capacity while in the employ of or associated with an MFDA Member for a period of three (3) months commencing from the date of the Panel's order, namely April 8, 2016;

(b) The Respondent shall pay a fine in the amount of $40,000 pursuant to section 24.1.1(b) of MFDA By-Law No. 1;

(c) The Respondent shall pay costs in the amount of $2,500 pursuant to section 24.2 of By-law No. 1; and

(d) In the future, the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rules 1.1.2, 2.1.1, and 2.5.1.

Agreed Facts

3. The agreed facts upon which the Settlement Agreement was based are the following. The Respondent was registered in the securities industry from April 1992 to January 2014. From March 27, 2013 to January 22, 2014, when he was terminated by his employer, the Respondent was registered in British Columbia as a mutual fund salesperson (now known as a Dealing Representative) with Networth Financial Corporation ("Networth"), a member of the MFDA. In the period October 2007 to March 27, 2013, the Respondent had been registered as a Registered Representative with Portfolio Strategies Securities Inc., formerly First Financial Securities Inc., a member of the Investment Industry Regulatory Authority of Canada.

4. At all material times, the Respondent conducted business in Surrey, British Columbia under the trade name "TaxDeductibleMortgage.com".

5. The Respondent has not been registered in the securities industry since he was terminated by Networth.

6. Between March 27, 2013 and January 22, 2014, the Respondent falsified client signatures or allowed his unlicensed assistant to falsify client signatures on 87 account forms and allowed his assistant to falsify his signature as the advisor on at least 42 account forms relating to 67 clients. The forms included account applications (including accounts involving the use of leverage), Know-Your-Client ("KYC") forms, transfer authorizations, leverage disclosure forms, and limited trade authorizations.

7. Networth filed a METS (Member Event Tracking System) report on December 23, 2013, updated to January 14, 2014, reporting that the Respondent had submitted 10 account forms containing falsified signatures. When interviewed by Networth on January 13, 2014, the Respondent admitted the falsifications in relation to the 10 account forms presented to him. He did not disclose that he had falsified signatures on any other account forms. The Respondent admitted falsifications on 87 account forms when interviewed by MFDA staff on October 14, 2014.

8. The Respondent admits that between March 27, 2013 and January 22, 2014, he falsified client signatures or allowed his unlicensed assistant to falsify client signatures on 87 account forms, and allowed his unlicensed assistant to falsify his signature as the advisor on at least 42 account forms relating to 67 clients.

9. The Respondent states that he engaged in the conduct in order to facilitate the transfer of client accounts from Portfolio Strategies to Networth without inconveniencing clients. There is no evidence that any client sustained financial harm as a result of the Respondent conduct, nor is there any evidence that the Respondent benefitted financially from his conduct or that he processed any trades or changes to client information without their knowledge.

Staff Submissions

10. Counsel for the MFDA cites MFDA Rule 2.1.1:

> 2.1.1. **Standard of Conduct**. Each Member and each Approved Person of a Member shall:
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> (a) deal fairly, honestly and in good faith with its clients;
> (b) observe high standards of ethics and conduct in the transaction of business;
> (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
> (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

11. Counsel says that the act of falsifying a client's signature is *prima facie* evidence of business conduct that is unbecoming and detrimental to the public interest. The prohibition against falsification exists regardless of client authorization or the motive behind the falsification. As with the prohibition against the use of pre-signed account forms, the MFDA has been warning Approved Persons such as the Respondent against falsifying forms for a number of years beginning in 2004 and continuing in 2007 and again in 2015. Counsel submits that the falsification of a client signature is a more serious breach of the established rules of MFDA practice and procedure than is the use of forms pre-signed in blank by a client. Finally, Counsel says allowing an assistant to falsify a client's signature is an equally serious breach of the MFDA Rules and established Practices and Procedures.

Panel Analysis

12. The Panel recognizes that it must accept or reject a Settlement Agreement in its entirety. It is well established that a Settlement Agreement should be approved if the sanctions imposed fall within the range of reason having regard for all of the relevant circumstances. The Panel is not permitted to amend the Settlement Agreement should it be of the view that some other penalty would be more appropriate.

13. The Panel recognizes that other settlement agreements or contested disciplinary decisions may assist in identifying the high and low ends of the range of sanction that might be considered in determining whether the sanctions imposed by the Settlement Agreement with which the Panel is concerned are appropriate. If a range cannot be identified from other decisions, then the Panel's task is to consider whether the sanctions are reasonable and appropriate in the circumstances. In *Re: Jacobson*, MFDA File No. 200712, Prairie Regional Council, July 13, 2007, a panel stated that hearing panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

(a) whether acceptance of the Settlement Agreement would be in the public interest and whether the penalties imposed will protect investors;
(b) whether the Settlement Agreement is reasonable and proportionate, having regard 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 deterrence;
(d) whether the proposed settlement 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.

14. The use of a Settlement Agreement to reflect a negotiated settlement should be encouraged provided the penalties set forth in the agreement "strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense": *Re: Kelvin Donald Byce*, MFDA File No. 201311, September 4, 2013, Central Regional Council, para.5.

15. Counsel advised the Panel that the Lisborg case was unique because of prolonged and continuing falsification, the extent of the falsification, and the fact that the Respondent involved

his unlicensed assistant in the process. As a result, decisions that might be regarded as comparable, thereby assisting in the identification of the appropriate range of sanction, were lacking. In the result, the Panel must consider whether the Settlement Agreement strikes the appropriate balance having regard for the factors cited in these reasons.

16. The Panel agrees that the falsification of a client signature is an egregious violation of MFDA Rules, Practices and Procedures. Simply stated, falsification of a signature is forgery that, in another context, is a criminal offence. The falsification in this instance is considerably more egregious because of its repeated occurrence over a period of 10 months, the number of clients whose signatures were forged, and the fact that the Respondent directed his assistant to falsify signatures on his behalf. The Panel is satisfied that any sanctions of less severity than those enumerated in the Settlement Agreement would not adequately respect the public interest and the integrity of the MFDA regulatory process.

17. For the foregoing reasons, the Settlement Agreement and the resulting Order were approved.

DATED this 26th day of April, 2016.

"Ian H. Pitfield"

Ian H. Pitfield
Chair

"Cecilia Macharia"

Cecilia Macharia
Industry Representative

"Holly Millar"

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Industry Representative

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