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: Patrick Daniel Lynch

Heard: March 9, 2021 by electronic hearing in Toronto, Ontario
Decision: March 9, 2021
Reasons for Decision: May 10, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart	Chair
Eugene Park	Industry Representative
Kenneth Mann	Industry Representative

Appearances:

Audrey Smith	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Rafal Szymanski	)	Counsel for the Respondent
Patrick Daniel Lynch	)	Respondent

I. INTRODUCTION

1. By Notice of Settlement Hearing, dated February 1, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced proceedings against Patrick Daniel Lynch (the "Respondent") indicating that an electronic hearing would be held on March 9, 2021, to consider whether the Hearing Panel should accept the settlement agreement, dated January 29, 2021 (the "Settlement Agreement"), entered into between the staff of the MFDA ("Staff") and the Respondent.

2. At the Settlement Hearing on March 9, 2021, the Hearing Panel, after hearing submissions of counsel for the parties and considering the Settlement Agreement, decided to accept it. These are our reasons for that decision.

II. THE RESPONDENT'S ADMISSION OF CONTRAVENTIONS

3. The Respondent admitted to the following violations of MFDA Rule 2.1.1:

a) between August 21, 2013 and February 27, 2019, he obtained, possessed and used to process transactions, 15 pre-signed account forms in respect of nine clients; and

b) between March 27, 2015 and March 4, 2019, he altered and used to process transactions, 20 account forms in respect of 16 clients by altering information on the account forms without having the clients initial the alterations.

III. PROPOSED SETTLEMENT

4. Staff and the Respondent agreed to the following terms of settlement that require that the Respondent:

a) pay a fine of $11,500 in certified funds upon acceptance of the Settlement Agreement by the Hearing Panel, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

b) pay costs of $1,750 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1; and

c) in the future comply with MFDA Rule 2.1.1.

IV. AGREED FACTS

Registration History

5. The Respondent has been registered in the securities industry since March 2003, and since September 2008, has been registered in Ontario as a dealing representative with FundEX Investments Inc. (the "Member"), a Member of the MFDA.

Pre-signed Forms

6. At all material times, the Member's policies and procedures prohibited its Approved Persons from using pre-signed account forms.

7. Between August 21, 2013, and February 27, 2019, the Respondent obtained, possessed and used to process transactions, 15 pre-signed account forms in respect of nine clients.

8. The pre-signed account forms included: four order entry forms, four fee for service account addendum forms, two systematic instruction forms, three transfer authorization forms, one CRA transfer form, and one investment account application form.

Altered Account Forms

9. At all material times, the Member's policies and procedures prohibited its Approved Persons from altering client account forms without obtaining client initials.

10. Between March 27, 2015, and March 4, 2019, the Respondent altered information on 20 account forms in respect of 16 clients, without having the clients initial the alterations, and used the forms to process transactions.

11. The altered account forms consisted of seven systematic instruction forms, two order entry forms, three new client application forms, four fee for service account addendum forms, three KYC update forms and one TFSA account application form.

12. The alterations made by the Respondent included changes to plan type, load type, fund code, beneficiaries, client net worth, client risk tolerance and investment time horizon.

The Member's Investigation

13. On April 23, 2019, during the course of a branch review, the Member identified several of the account forms that are the subject of this proceeding. Subsequently, a 100% file review was completed on May 8, 2019, in which the remaining forms were identified.

14. On October 8, 2019, the Member sent letters to all clients whose accounts were serviced by the Respondent. In respect of the subject forms that contained KYC information, the Member asked the clients to review the KYC information the Member had on record to ensure it was accurate and up to date. In respect of the other subject forms, the Member asked the clients to review their account history for accuracy and contact the Member if any inconsistencies existed.

15. No clients responded to the Member with any concerns.

16. Between August 14, 2019 and December 2, 2019, the Member placed the Respondent under strict supervision, and subsequently issued a warning letter to him in respect of the subject conduct.

17. The Respondent paid $3,405 to the Member in respect of a monthly non-compliance surcharge while he was under strict supervision, as well as fees for each audit letter sent to his clients.

V. CONSIDERATIONS

Role of the Hearing Panel

18. Section 24.4.3 of MFDA By-law No. 1 provides that hearing panels may only accept or reject a settlement agreement.

19. It is generally accepted that a hearing panel will not lightly interfere with a settlement agreement reached between Staff and a respondent and will not reject it unless it views the penalty as clearly falling outside a reasonable range of appropriateness. See, for example, *Sterling Mutuals Inc. (Re),* LNCMFDA 16 at para. 37.

20. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily: whether it was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and previous MFDA cases; whether it would serve as a specific and general deterrent; and whether it was aligned with the MFDA's objectives to enhance investor protection and strengthen public confidence in the mutual fund industry.

Misconduct

21. MFDA Rule 2.1.1 requires, among other things, that Approved Persons deal fairly, honestly and in good faith with their clients, observe high standards of ethics and conduct in the transaction of business and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

22. We found that, as admitted by the Respondent, he contravened MFDA Rule 2.1.1 when he obtained and possessed pre-signed account forms and altered information on account forms without having the clients initial the changes, and used the subject forms to process transactions.

23. The Respondent's subject actions were also contrary to the Member's policies and procedures.

24. Obtaining and using pre-signed account forms and altering account forms is serious misconduct as it can, among other things, negatively impact the integrity of account documents, destroy the audit trail, impede a Member's ability to supervise accounts and respond to client complaints and potentially allow for misuse such as unauthorized trading and misappropriation.

Sanction

25. In our opinion, the nature of the misconduct described above warranted a meaningful fine.

26. In considering the proposed sanction, we regarded the following as aggravating factors:

a) the Respondent had been registered in the securities industry for 10 years before the misconduct commenced and should have been aware of the rules; and
b) some of the misconduct occurred after the MFDA had issued its Bulletin #0661-E, dated October 2, 2015, in which the MFDA warned the industry against, among other things, using pre-signed account forms and altering account forms and advised that it would be seeking increased penalties in future such cases.

27. In reaching our decision on the sanction, we considered a number of mitigating factors, including that:

a) there was no evidence that the Respondent received any financial benefit from the misconduct beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner;
b) there was no evidence of client loss or lack of authorization;

c) the Respondent had not previously been the subject of MFDA disciplinary proceedings;

d) the Member took action to address the misconduct, including placing the Respondent under strict supervision and issuing a warning letter;

e) the Respondent had paid $3,405 to the Member in respect of his misconduct; and

f) by entering into the Settlement Agreement, the Respondent accepted responsibility for his misconduct and saved the MFDA the time, resources and expenses associated with conducting a full hearing.

28. In our view, the fine of $11,500 should deter the Respondent from engaging in similar conduct in the future.

29. The sanction should also serve the goal of general deterrence by sending a message to others in the mutual fund industry that the subject conduct will not be tolerated and that those who engage in similar conduct will face meaningful penalties.

30. The proposed penalty was within a reasonable range of appropriateness, having regard to other decisions made by MFDA hearing panels arising out of settlements in somewhat similar circumstances, including those set out below. The fines imposed in those cases ranged from $8,500 to $14,000, and in each case costs of $2500 were imposed.

> *Prabhune (Re),* [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202042, Reasons for Decision dated December 18, 2020
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> *Warr (Re),* [2020] Hearing Panel of the Atlantic Regional Council, MFDA File No. 202037, Reasons for Decision dated September 25, 2020
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> *Nash (Re),* [2018] Hearing Panel of the Atlantic Regional Council, MFDA File No. 2018113, Reasons for Decision dated February 7, 2019
>
> *Scholes (Re),* [2018] Hearing Panel of the Pacific Regional Council, MFDA File No. 201882, Reasons for Decision dated January 29, 2019.

31. The proposed costs in this case were lower than costs generally awarded in other similar cases. We were advised by Staff that they were lower because this matter had been investigated together with another matter and, accordingly, required less Staff time. As a result, we decided that the costs were reasonable.

VI. CONCLUSION

32. We concluded that the proposed sanction was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's conduct and previous MFDA cases.

It should serve as a specific and general deterrent. We were also of the view that it was aligned with the MFDA's regulatory objectives. Accordingly, we decided to accept the Settlement Agreement.

DATED this 10th day of May, 2021.

"Joan Smart"
Joan Smart
Chair

"Eugene Park"
Eugene Park
Industry Representative

"Kenneth Mann"
Kenneth Mann
Industry Representative

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