



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: Heather Lynn

Heard: October 29, 2015 in Toronto, Ontario
Reasons for Decision: December 21, 2015

**ORAL REASONS FOR DECISION FOR ACCEPTANCE OF
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.)	Chair
Kenneth P. Mann)	Industry Representative
T. Hugh McNabney)	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Heather Lynn)	In Person
)	

1. The following reasons were delivered orally at the conclusion of the hearing on October 29, 2015.

Settlement Agreement

2. MFDA Staff (“Staff”) and Heather Lynn (the “Respondent”) entered into a Settlement Agreement dated September 7, 2015, (the "Settlement Agreement") in which the Respondent admits that between April 2012 and June 2013 she:

- a) obtained, possessed, and in some instances, used to process trades, 54 pre-signed account forms in respect of 10 clients, contrary to MFDA Rule 2.1.1;
- b) obtained, altered, and in one instance, used to complete a transaction, two client account forms in respect of two clients, contrary to MFDA Rule 2.1.1.

Agreed Penalty

3. The Respondent has agreed to pay a fine in the amount of \$7,500 and costs in the amount of \$2,500.

4. The Respondent was previously fined by her Member \$6,000. She was put under a period of close supervision for one year and was required to complete two industry courses at her own expense.

Decision

5. We determine that the Settlement Agreement as the proposed resolution falls inside the reasonable range of appropriateness, having regard to the nature of the conduct admitted by the Respondent and the MFDA's regulatory objective of protecting the public. It is in the public interest that we approve the Settlement Agreement and, therefore, we accept it.

Facts

6. The relevant facts are set out in section IV of the Settlement Agreement, which is attached hereto as Schedule '1'.

Reasons

7. The rules of the MFDA require that each Member and Approved Person 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.

8. "Pre-signed account forms" is a generic term which applies to a variety of situations where an Approved Person seeks to rely on a client's signature on a document when the signature was not provided by the client at the time the document was completed.

9. The MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years. Hearing panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

10. The use of pre-signed account forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has potential for misuse in the form of unauthorized trading, fraud and misappropriation.

11. As the Hearing Panel explained in *Price (Re)*, [2011] Hearing Panel of the Ontario Regional Council, MFDA File No. 201311:

"Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading... At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client. Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client

authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.”

12. The prohibition on the use of pre-signed account forms applies regardless of whether the client was aware or authorized the use of the pre-signed forms, and whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

13. In the present case, the Respondent admits that she obtained, altered, and in one instance, used to complete a transaction, two client forms in respect of two clients. In particular, the Respondent altered the relinquishing institution name and account number on a Transfer Authorization form, and cut and pasted a client's signature from a previously signed document onto a letter submitted in support of a transaction.

14. We understand from our questions and the answers that were given in this hearing that the clients involved knew what was happening, as far as the transactions were concerned, that they wanted the transactions to be completed, that the transactions were done in accordance with the clients' wishes, but that, as said in the Settlement Agreement, the Respondent altered the signature of one client on a letter required to complete a transaction for fear of losing the client account if she bothered the client to whom she had already gone back several times in the process of completing the transaction in question.

15. The Respondent did not commit fraud or a moral act with turpitude to use these forms for the purpose of lining the Respondent's pocket or defrauding the client or deceiving the client or others. However, as for the prohibition on using pre-signed account forms, the prohibition against altering forms exists regardless of the existence of client authorization or the motivation behind the use of the form. As in the case of using pre-signed account forms, the MFDA has been warning Approved Persons against falsifying forms for a number of years. As in the case of using pre-signed account forms, the creation, possession, or use of an altered form is considered serious misconduct.

16. The reasoning in *Price (Re)*, which I referred to, as to why pre-signed account forms affect the integrity and reliability of account documents also applies to altered forms.

17. Some consider this type of form to be a more serious violation of the contravention of the standard of conduct under MFDA Rule 2.1.1. The falsification of a client's signature or initials is particularly serious. The authenticity of clients' signatures is one of the foundations upon which client trust is established and client instructions are carried out. Unlike pre-signed account forms where the client knows he or she is signing an incomplete form to be used in some way, in the case of a form altered by the Approved Person, the possibility exists that the client is unaware of the Approved Person's actions.

18. Hearing panels of some Canadian securities regulatory authorities have commented on the gravity of the act of altering a form, using the term "forgery" instead of "alteration" or "falsification" to describe similar conduct. However, I would not use the term "forgery" in the case before us. I would reserve that word for cases where the activity took place to deceive a client, or to scam a client or somehow to line the pocket of the Respondent in an improper way. In other words, where the conduct contained an element of moral turpitude.

19. While not condoning in any respect the conduct of the Respondent in this case, the alteration or falsification of the signature of a client and the cutting and pasting of a form, where there is no moral turpitude, is not as serious as cases where there is also an element of moral turpitude, at least for the purpose of in determining appropriate penalties.

20. Some other considerations we took into account in accepting the Settlement Agreement and the level of penalties agreed to are as follows. There was no evidence of client harm; the Respondent stated that she used pre-signed account forms for client convenience; and with respect to the altered signature, the client was aware of the transaction and what was happening, although not of the fact that the additional forms were required to be signed by that client. The reason the Respondent did not go back to the client was fear of losing the client if she bothered the client again. This was not a sufficient reason for breaching the rules, but at least a reason not tainted with moral turpitude. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, other than the commissions and fees which ordinarily she would be entitled to receive, had the transaction been carried out in

the proper manner. The Respondent has been registered in the mutual fund industry since 1999 and she ought to have known and respected her Member's compliance requirement.

21. We noted the fact that The Respondent has been required to retake two industry courses and has been under close supervision for a year.

22. The Respondent has not been previously subject to MFDA disciplinary proceedings.

23. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing. The Respondent also cooperated with the Member's internal investigation into her conduct and understands the seriousness of her actions.

24. The proposed penalties are consistent with the penalty guidelines. The penalty guideline suggests a minimum fine of \$5,000. The proposed fine of \$7,500 reflects the existence of two different violations of MFDA Rule 2.1.1, and fact that the Member already imposed significant penalties on the Respondent.

25. We reviewed briefly the decisions that were referred to us by Staff, including *Rattenbury (Re)* [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201219, and *Ewart (Re)* [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201528.

26. We believe that the agreed penalties provide a significant deterrence, both to the Respondent, and to the general public and the industry and we believe that the proposed penalties are in keeping with the penalties in the precedent cases.

This written version of the oral Reasons for Decision is

DATED this 21st day of December, 2015.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Kenneth P. Mann”

Kenneth P. Mann
Industry Representative

“T. Hugh McNabney”

T. Hugh McNabney
Industry Representative



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: Heather Lynn

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Heather Lynn.

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 XI) 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 in the mutual fund industry since January 1999.

7. Since April 2012, the Respondent has been registered as a mutual fund salesperson (now known as a Dealing Representative) with Credential Asset Management Inc. (“CAM”), a member of the MFDA.

8. At all material times, the Respondent conducted business in the St. Catharines, Ontario area.

Pre-Signed Account Forms

9. At all material times, CAM's policies and procedures prohibited its Representatives, including the Respondent, from possessing blank or partially complete pre-signed forms.

10. Between April 23, 2012 and June 13, 2014, the Respondent obtained, possessed, and in some instances, used to process trades, a total of 54 pre-signed forms in respect of 10 clients.

11. The 54 pre-signed account forms, 3 of which were used to process transactions, consisted of Trade Authorization, New Account Application, and Investment Instruction forms.

Falsified Forms

12. Between April 23, 2012 and June 13, 2014, the Respondent obtained, altered, and in one instance, used to complete a transaction, 2 account forms in respect of 2 clients.

13. In particular, the Respondent:

- (a) altered the relinquishing institution name and account number on a Transfer Authorization form; and
- (b) cut and pasted a client signature from a previously signed document onto a letter submitted in support of a transaction.

Post-Detection

14. CAM's compliance staff detected the conduct that is the subject of this Settlement Agreement in June 2014, after the Respondent's assistant found a pre-signed form in a client file and alerted management.

15. As part of its investigation, CAM contacted all affected clients either verbally or by letter. None of the clients reported any concerns to CAM.

16. The Respondent had not obtained limited trade authorizations for any of the conduct set out in paragraphs 10 and 11, above.

17. In an interview on July 3, 2014, the Respondent acknowledged that the use of pre-signed forms and altered forms is an unacceptable practice.

18. The Respondent further stated that she accepted pre-signed account forms for client convenience. She falsified the signature of one client on a letter required to complete a transaction for fear of losing the client account if she bothered the client, to whom she had already gone back to several times in the process of completing the transaction in question.

19. CAM placed the Respondent on close supervision for a one year period beginning July 1, 2014 and fined the Respondent \$6,000. CAM also required the Respondent to complete two industry courses at her own expense.

Additional Factors

20. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond the commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in a proper manner.

21. The Respondent co-operated with CAM's investigation into her conduct.

22.

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

24. 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

25. The Respondent admits that between April 23, 2012 and June 13, 2014, the Respondent:

- (a) obtained, possessed, and in some instances, used to process trades, a total of 54 pre-signed account forms in respect of 10 clients; and
- (b) obtained, altered, and in one instance, used to complete a transaction, 2 account forms in respect of 2 clients;

contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

- (a) the Respondent shall pay a fine in the amount of \$7,500 pursuant to s. 24.1.1(b) of MFDA By-Law No.1;
- (b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No.1;
- (c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- (d) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

27. 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 XI below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and 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.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

28. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

29. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive her rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

30. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

31. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against her.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

32. 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.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

33. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

34. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that she will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

35. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

36. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

37. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

38. A facsimile copy of any signature shall be effective as an original signature.

DATED this 7th day of September, 2015.

“Brandon Lynn”

Witness – Signature

“Heather Lynn”

Heather Lynn

Brandon Lynn

Witness – Print name

“Shaun Devlin”

Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

Schedule “A”

Order

File No. 201537



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: Heather Lynn

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of [Respondent] (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that between April 23, 2012 and June 13, 2014, the Respondent:

- (a) obtained, possessed, and in some instances, used to process trades, a total of 54 pre-

signed account forms in respect of 10 clients; and

(b) obtained, altered, and in one instance, used to complete a transaction, 2 account forms in respect of 2 clients; and

contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent pay a fine in the amount of \$7,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
2. The Respondent pay costs in the amount of \$2,500 pursuant to s.24.2 of MFDA By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
4. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

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