



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: Neil Robert MacDonald

Heard: July 24, 2018 in Vancouver, British Columbia

Decision: July 24, 2018

Reasons for Decision: August 24, 2018

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield
Holly Millar
Michelle Leung

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Hunter Parsons)	Counsel for the Respondent
)	
)	
Neil Robert MacDonald)	Respondent, in person
)	

1. On July 24, 2018, after hearing submissions from counsel, the Panel approved a Settlement Agreement dated June 22, 2018 between the Mutual Fund Dealers Association of Canada (MFDA) and the Respondent, Neil Robert MacDonald, in respect of the following violations of MFDA By-laws, Rules or Policies:

- a) between December 2012 and June 2015, the Respondent obtained, possessed, and used to process transactions, six pre-signed account forms in respect of three clients, contrary to MFDA Rule 2.1.1; and
- b) between December 2012 and November 2014, the Respondent falsified and used to process transactions, eight client account forms in relation to five clients by altering the client account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

2. The resulting Order provides that the Respondent shall pay a fine of \$6,000 and costs of \$2,500. The costs amount is payable forthwith. The fine is payable in six monthly instalments commencing August 31, 2018. In the event of a failure to pay any of the amounts, the amount owing at the time of default shall be immediately due and payable, and the Respondent shall be prohibited from employment or association with any MFDA Member until the amount owing has been paid.

Agreed Facts

3. The agreed facts were set forth in the Settlement Agreement as follows:

7. Since April 2008, the Respondent has been registered in British Columbia 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.

8. At all material times the Respondent carried on business in the Penticton, British Columbia, area.

9. At all material times Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from holding, obtaining, or using pre-signed account forms.

10. Between December 2012 and June 2015, the Respondent obtained, possessed, and used to process transactions, six pre-signed account forms in respect of three clients.
11. The pre-signed account forms consisted of pre-authorized chequing forms, RESP transfer forms, and a Grant application form.
12. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent from holding, obtaining, or using falsified account forms.
13. Between December 2012 and November 2014, the Respondent falsified eight account forms in respect of five clients by altering trading instructions on the account forms without having the client initial the alterations.
14. In June 2016, Sun Life identified two of the pre-signed and falsified forms described above during an onsite branch review. Sun Life subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining falsified and pre-signed account forms that are the subject of this Settlement Agreement.
15. On August 1, 2016, Sun Life placed the Respondent under close supervision.
16. In October 2016, as part of its investigation, Sun Life sent audit letters to all of the clients whose accounts the Respondent serviced in order to determine whether they had any unauthorized transactions in their accounts. No clients reported any concerns to Sun Life.
17. On October 3, 2016, Sun Life issued a warning letter to the Respondent for possessing and using pre-signed and falsified account forms, and placed him under continued close supervision for a period of 12 months.
18. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
19. There is no evidence of any client loss or that the transactions were unauthorized.
20. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

Analysis

4. This is an instance in which the Respondent has improperly used six pre-signed account forms in respect of three clients, and falsified, and used to process transactions, eight account forms in relation to five clients by altering the forms without having the client initial the alterations. In both cases, the Respondent has contravened MFDA Rule 2.1.1 that provides as follows:

2.1.1 Standard of Conduct

Each Member and each Approved Person of a Member shall:

- 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 [MFDA].

5. As stated by Enforcement Counsel, the MFDA has made it clear to Approved Persons such as the Respondent since 2007 that possessing and using pre-signed forms is contrary to the obligations set forth in Rule 2.1.1: see *Member Staff Notice 0066* dated October 31, 2007, updated March 4, 2013. The prohibition applies regardless of whether the client was aware or authorized the use of the pre-signed forms. The danger associated with the use of such forms is that they may be used to engage in discretionary trading, they create the opportunity for acts of fraud, theft or other forms of harmful conduct towards a client, and they impede or subvert the ability of a Member to properly supervise trading activity. Enforcement Counsel states that the creation, use or possession of an altered or falsified form that has not been initialed by a client is equally egregious and a contravention of MFDA Rule 2.1.1: see *Re Bryce*, MFDA File No. 201311, Central Regional Council, September 4 2013.

6. Enforcement Counsel cites three comparables:

Re Nguyen, MFDA File No. 2016105, Prairie Regional Council, April 18, 2017, in which a hearing panel imposed a fine of \$7,500 on, and ordered payment of costs of \$2,500 by, a dealing representative who had obtained 16 pre-signed forms in respect of 9 clients, and who had altered 2 account forms without having the clients initial the changes.

Re Holowaty, MFDA File No. 201680, Central Regional Council, March 29, 2017, in which a hearing panel imposed a fine of \$7,500 on, and ordered payment of costs of \$2,500 by, a dealing representative who had obtained, and in some cases used, 6 pre-signed account forms, and who had altered 6 account forms without having the clients initial the changes.

Re Pereira, MFDA File No. 201652, Central Regional Council, July 27, 2017, in which a hearing panel imposed a fine of \$7,000 on, and ordered payment of costs of \$2,500 by, a dealing representative who had obtained, and in some cases used, 8 pre-signed forms, and who had altered 3 account forms without having the clients initial the changes.

7. The well-established principle is that a hearing panel will not reject a settlement agreement unless the proposed penalty falls outside the reasonable range of appropriateness. Settlements advance the MFDA's regulatory objective of protecting the public by proscribing activities that are harmful to the public while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent: see *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484, at paras. 31 and 49.

8. The decisions cited by counsel suggest that the fine in this case might have been higher than \$6,000. However, one cannot lose sight of the fact that the MFDA penalty guidelines suggest a minimum fine of \$5,000 and the MFDA has recently announced that it intends to seek fines above the minimum suggested by the guidelines. The Panel concludes that the fine of \$6,000 and the order for the payment of costs of \$2,500 fall within the reasonable range of appropriateness. As a result, the Settlement Agreement is approved.

DATED this 24th day of August, 2018.

“Ian H. Pitfield”

Ian H. Pitfield
Chair

“Holly Millar”

Holly Millar
Industry Representative

“Michelle Leung”

Michelle Leung
Industry Representative

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