



**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: William Robert Martin**

Heard: September 27, 2018 in Toronto, Ontario

Decision: September 27, 2018

Reasons for Decision: December 7, 2018

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC  
Kenneth P. Mann  
Joseph Yassi

Chair  
Industry Representative  
Industry Representative

Appearances:

Thomas Ng	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Rafal Szymanski	)	Counsel for the Respondent
	)	
	)	
William Robert Martin	)	Respondent, in person
	)	
	)	

## **Background**

1. The Hearing Panel accepted the settlement agreement dated September 4, 2018 (“Settlement Agreement”) between the staff of the MFDA and William Robert Martin (“Respondent”). A copy of the Settlement Agreement is attached to these Reasons as Appendix “A”. The agreed facts are set out in Section III of the settlement Agreement.

## **Contraventions**

2. The Respondent admitted that:
- a) between January 2007 and September 2017 he obtained, possessed, and in some instances used to process transactions, 124 pre-signed account forms in respect of 50 clients, contrary to MFDA Rule 2.1.1; and
  - b) between February 2010 and February 2017, he altered 11 account forms in respect of 10 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

## **Agreed penalties**

3. The agreed penalties were: i) a fine of \$17,000; and ii) a costs award of \$2,500.
4. See also paragraph 7 of these reasons.

## **Considerations**

5. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the agreed penalty.

### **Nature of the Misconduct**

6. Obtaining, possessing, and using pre-signed account forms and altering account forms without having the clients initial the alterations are conduct contrary to the referenced rule.

### **Other considerations in determining acceptability of agreed penalties**

7. On April 26, 2017, the Member placed the Respondent under strict supervision. As of September 1, 2018, the Respondent has paid the Member \$10,460 in respect of the strict supervision.

8. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond any commissions and fees that he would normally be entitled to receive if the transactions had been carried out in the proper manner.

9. There was no evidence of client loss or lack of client authorization.

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

11. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

12. The agreed penalties are within the recommendations of the MFDA penalty guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff and Respondent's counsel, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

### **Costs**

13. The costs award is reasonable.

## Conclusion

14. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

**DATED** this 7<sup>th</sup> day of December, 2018.

“Paul M. Moore”

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Paul M. Moore, QC  
Chair

“Kenneth P. Mann”

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Kenneth P. Mann  
Industry Representative

“Joseph Yassi”

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Joseph Yassi  
Industry Representative

DM 642833



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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, William Robert Martin (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").
2. Staff conducted an investigation of the Respondent's activities which disclosed 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.

**II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.
4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada ("MFDA"):

- a) between January 2007 and September 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 124 pre-signed account forms in respect of 50 clients, contrary to MFDA Rule 2.1.1; and
  - b) between February 2010 and February 2017, the Respondent altered 11 account forms in respect of 10 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.
5. Staff and the Respondent agree and consent to the following terms of settlement:
- a) the Respondent shall pay a fine in the amount of \$17,000 in certified funds upon acceptance of the Settlement Agreement, 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 in certified funds upon acceptance of the Settlement Agreement, 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.
6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule “A”.

### **III. AGREED FACTS**

#### **Registration History**

7. Since 1997, the Respondent has been registered as a mutual fund salesperson. Since 2001, the Respondent has been registered in Ontario as mutual fund salesperson (now known as a Dealing Representative) in Ontario with FundEX Investments Inc. (“FundEX”), a Member of the MFDA. Between 2006 and 2014, the Respondent was also registered in Nova Scotia as a mutual fund salesperson with FundEX.<sup>1</sup>

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<sup>1</sup> Between 2001 and September 2006, the Respondent was registered with FundTrade Financial Corp., which amalgamated with FundEX in September 2006.

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

### **Pre-Signed Account Forms**

9. Between January 2007 and September 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 124 pre-signed account forms in respect of 50 clients.

10. The pre-signed account forms included order entry forms, Know-Your-Client forms, and new client application forms.

### **Altered Account Forms**

11. Between February 2010 and February 2017, the Respondent altered 11 account forms in respect of 10 clients by altering information on the account forms without having the clients initial the alterations.

12. The altered account forms included order entry forms, Know-Your-Client forms, and new client application forms.

### **FundEx's Investigation**

13. In or around April 2017, during the course of a branch audit, FundEX reviewed all client files serviced by the Respondent and identified the account forms that are the subject of this Settlement Agreement.

14. FundEX sent a letter to all clients whose accounts the Respondent serviced in order to determine whether the Respondent engaged in unauthorized trading. No clients reported any concerns.

15. On April 26, 2017, FundEX placed the Respondent under strict supervision, and, as of September 1, 2018, the Respondent has paid to FundEX the amount of \$10,460 in respect of the strict supervision.

16. On June 14, 2018, FundEX issued a warning letter to the Respondent in respect of the pre-signed account forms identified in its review.

#### **Additional Facts**

17. There is no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

18. There is no evidence of client loss or lack of authorization for the underlying transactions.

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

20. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegation.

#### **IV. ADDITIONAL TERMS OF SETTLEMENT**

21. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

22. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the “Settlement Hearing”). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at [www.mfda.ca](http://www.mfda.ca).

23. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions,

revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

24. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent waives any 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;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) 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; and
- e) 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 the Respondent.

25. If, for any reason, this Settlement Agreement is not accepted 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 the Settlement Agreement or the settlement negotiations.

26. Staff and the Respondent agree that the terms of the 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.

27. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 4<sup>th</sup> day of September, 2018.

“William Robert Martin”  
\_\_\_\_\_  
William Robert Martin

“BM”  
\_\_\_\_\_  
Witness – Signature

BM  
\_\_\_\_\_  
Witness – Print Name

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

**Schedule “A”**

**Order  
File No.**



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**Re: William Robert Martin**

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**ORDER**

(ARISING FROM SETTLEMENT HEARING ON SEPTEMBER 27, 2018)

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**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 William Robert Martin (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:

- a) between January 2007 and September 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 124 pre-signed account forms in respect of 50 clients, contrary to MFDA Rule 2.1.1; and

- b) between February 2010 and February 2017, the Respondent altered 11 account forms in respect of 10 clients by altering information on the account forms without having the clients initial the alterations, 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 shall pay a fine in the amount of \$17,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, 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, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all 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]