



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: Jeremy Allen Martin

Heard: April 12, 2016 in Halifax, Nova Scotia
Reasons for Decision: June 3, 2016

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, Q.C.
Darrell Bing

Chair
Industry Representative

Appearances:

Paul Blasiak

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Counsel for the Mutual Fund Dealers
Association of Canada

Jeremy Allen Martin

In Person and not represented by Counsel

NOTICE OF SETTLEMENT HEARING

1. By Notice of Settlement Hearing (“Notice”), dated January 8, 2016, notice was given of the date, time and place when a Hearing Panel of the Atlantic Regional Council would consider whether, pursuant to section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”), it should accept a settlement agreement which it was anticipated would be entered into between the Staff of the MFDA and Jeremy Allen Martin (the “Respondent”).

2. The Notice also stated that:

- (a) “The subject matter of the proposed Settlement Agreement concerns matters for which the Respondent may be disciplined as an Approved Person of the MFDA, pursuant to ss. 20 and 24.1.1 of By-law No. 1 of the MFDA”; and
- (b) “The proposed Settlement Agreement concerns an allegation that on or about December 10, 2014, the Respondent falsified a client’s signature on a Know-Your-Client form, contrary to Rule 2.1.1.”

3. On February 1, 2016, the MFDA issued a news release announcing that it had issued the Notice. This news release gave public notice that the settlement hearing would take place on April 12, 2016, at a specified location in Halifax, Nova Scotia.

4. The Settlement Agreement, which was presented to the Hearing Panel at the settlement hearing, was executed on April 7, 2016.

5. Section 24.4.3 of MFDA By-law No. 1 provides, in part, as follows:

“A Hearing Panel shall not consider a settlement agreement pursuant to this Section unless notice of the hearing has been given in accordance with such period of time as is provided for in the Corporation’s rules of procedure and Section 24.5 specifying:

- (c) the date, time and place of the hearing; and
- (d) the purpose of the hearing with sufficient information to identify the Member or Approved Person involved and the general terms of the settlement agreement.”

6. Rule 15.2 of the MFDA Rules of Procedure provides that at least 10 days’ notice must be provided in the manner set out in section 24.5 of MFDA By-law No. 1.

7. In our view, the contents of the Settlement Agreement presented to the Hearing Panel on April 12, 2016, complied with the provisions of section 24.4.2 of MFDA By-law No. 1. In addition, the Notice complied with the provisions of both section 24.4.3 of MFDA By-law No. 1 and Rule 15.2 of the Rules of Procedure. Accordingly, the fact that the Settlement Agreement was executed within 10 days of the Settlement Hearing did not prevent the Hearing Panel from considering whether it should be accepted or rejected.

B. THE HEARING PANEL

8. The Hearing Panel consisted of one public representative and one industry representative.

9. Section 19.9 of MFDA By-law No. 1 provides that “Hearing Panels shall be composed of (a) three members of the Regional Council . . .”. However, section 19.9(b) provides that two members of the Regional Council may compose a Hearing Panel in the event that an industry representative is “unable to continue to serve”.

10. Staff Counsel made submissions as to why section 19.9(b) applied, although he was unable to provide many specifics as to the inability to “continue to serve”. Both parties requested that this matter proceed with a Hearing Panel composed of two members.

11. Section 19.9(b) provides that the Chair of the Hearing Panel shall decide whether or not to proceed with a two-member Hearing Panel. After considering the submissions of MFDA Counsel and the joint request of the parties and applying a liberal interpretation of section 19.9(b), a decision was made by the Chair to proceed with a two-member Panel.

C. THE SETTLEMENT HEARING

12. At the commencement of the settlement hearing, the Hearing Panel granted a joint Motion of Counsel for Staff and the Respondent to move the proceedings “in camera” while we considered the Settlement Agreement, as well as the written and oral submissions of Staff and the oral submissions of the Respondent.

13. After a detailed review of the Settlement Agreement, as well as a consideration of the submissions of the parties, we unanimously concluded that it was in the public interest that the Settlement Agreement be accepted.

14. On April 12, 2016, the Hearing Panel executed an Order giving effect to the terms of the Settlement Agreement. At that time, we advised that we would provide written Reasons for our Decision. These are those Reasons.

D. THE SETTLEMENT AGREEMENT

15. The salient portions of the Settlement Agreement are as follows:

“IV. AGREED FACTS

Registration History

6. The Respondent was registered in the securities industry commencing in 1997.
7. From August 26, 2014 to December 23, 2014 when he resigned as a result of the events described herein, the Respondent was registered in Nova Scotia as a dealing representative (formerly known as a mutual fund salesperson) with Royal Mutual Funds Inc. (“Royal Mutual”), a Member of the MFDA.

8. The Respondent is not currently registered in the securities industry.
9. At all material times, the Respondent conducted business in the Wolfville, Nova Scotia area.

Falsification of Client's Signature

10. In October 2014, the Respondent met with client TB in order to open a Tax Free Savings Account ("TFSA"), a Registered Retirement Savings Plan ("RRSP") account and a non-registered account at Royal Mutual. The Respondent obtained account opening documents from client TB and submitted them to Royal Mutual for processing.
11. Later in October 2014, Royal Mutual compliance staff advised the Respondent that he had failed to submit a Know-Your-Client ("KYC") form in respect of client TB's TFSA.
12. Between October 2014 and December 2014, Royal Mutual compliance staff issued further notifications to the Respondent reminding him to submit the KYC form. During this time, the Respondent made several unsuccessful attempts to contact client TB in order to obtain the KYC form.
13. On December 8, 2014, the Respondent's Branch Manager sent an email to the Respondent requesting that he obtain the KYC form from client TB.
14. On or about December 10, 2014, having been unsuccessful in contacting client TB, the Respondent falsified client TB's signature on a KYC form and submitted it to Royal Mutual for processing.
15. Later on December 10, 2014, the Respondent sent an email to his Branch Manager and Sales Manager falsely stating that client TB had signed the KYC form.

16. On December 11, 2014, while the Respondent was away on vacation, client TB attended at the Respondent's branch location and advised the Respondent's Branch Manager that she had not seen the Respondent for several weeks.
17. On December 22, 2014, the Respondent's Sales Manager met with the Respondent and informed him of client TB's attendance at his branch location. Upon hearing this, the Respondent admitted that he had falsified client TB's signature on the KYC form.
18. In a written statement to the MFDA dated February 26, 2015, the Respondent stated that he falsified client TB's signature on the KYC form in order to "alleviate the stress" that he was experiencing as a result of his failure to produce the KYC form.

Additional Factors

19. The Respondent states that he is impecunious and unable to pay any amount towards either a fine or costs.
20. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
21. The signature falsification that the Respondent made on the KYC form did not alter client TB's investment intentions.
22. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above, beyond the commissions or fees he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.
23. The Respondent has expressed remorse for his actions.
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, on or about December 10, 2014 he falsified a client's signature on a KYC form, 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 be prohibited for three months from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b. the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- c. the Respondent will attend in person, on the date set for the Settlement Hearing.”

E. THE LAW RELATING TO SETTLEMENT AGREEMENTS

16. Section 24.4.3 of MFDA By-law No. 1 provides the Hearing Panel with only two options when considering a Settlement Agreement. The Panel must either accept or reject the Settlement Agreement. It does not have the power to modify or vary any part of it.

17. In a contested hearing, the Hearing Panel strives to impose the correct penalty in light of evidence adduced before it. In a Settlement Hearing, the Hearing Panel should not reject the settlement unless it views the penalty sought to be imposed as clearly falling outside a “reasonable range of appropriateness”.

Re: *Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 10, Ontario District Council Decision, dated July 28, 1999.

18. Settlements do assist the MFDA in fulfilling its regulatory objective of protecting the public. They advance this objective by proscribing activities which are harmful to the public,

while enabling the parties to reach a flexible remedy to address the interests of both the regulator and the Respondent.

Re: *British Columbia (Securities Commission) v. Seifert*, 2007 B.C.C.A. 484 at para. 31.

19. Past MFDA Hearing Panels have set out a number of considerations which should be taken into account when determining whether a proposed settlement should be accepted. These include:

- (a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty 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.

Re: *Investors Group Financial Services* (2005) MFDA Ontario Regional Council, File No. 200401 at pp. 2-4.

20. Past MFDA Hearing Panels have also delineated a number of factors which should be considered when determining whether a proposed penalty is appropriate. These include:

- (a) the seriousness of the allegations proved against the Respondent;
- (b) the Respondent's past conduct, including prior sanctions;

- (c) the Respondent's experience and level of activity in the capital markets;
- (d) whether the Respondent recognizes the seriousness of the improper activity;
- (e) the harm suffered by investors as a result of the Respondent's activities;
- (f) the benefits received by the Respondent as a result of the improper activity;
- (g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- (h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (k) previous decisions made in similar circumstances.

Re: *Headley (Re)*, 2006 LNCMFDA 3, at para. 85.

21. The MFDA Penalty Guidelines, while not mandatory, are an additional source which Hearing Panels can refer to in determining the appropriateness of the proposed penalties.

F. CONSIDERATIONS IN THE PRESENT CASE

22. Staff submitted that it had taken the above factors into consideration in reaching the Settlement Agreement with the Respondent. Staff then emphasized a number of factors which it considered particularly relevant.

(a) Nature of the Misconduct

23. We agree with Staff that the falsification of a client's signature is a serious breach of MFDA Rule 2.1.1.

24. As was stated by a Hearing Panel of the Investment Dealers Association (now IIROC) in Bell (Re):

“Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole.”

Bell (Re) [2005] I.D.A.C.D. No. 15, Alberta District Council, Panel Decision dated March 21, 2005, at para. 35.

25. Paragraph 18 of the Settlement Agreement provided as follows:

“In a written statement to the MFDA dated February 26, 2015, the Respondent stated that he falsified client TB’s signature on the KYC form in order to “alleviate the stress” that he was experiencing as a result of his failure to produce the KYC form.”

26. We are unanimously of the view that this statement provides no justification whatsoever for the actions of the Respondent. In our view, there can be no justification for forgery.

27. However, when it comes to the issue of appropriate penalty, hearing panels have distinguished between serious and less egregious instances of falsification. Acts of falsification which resulted in loss or disadvantage to the clients or Member will be treated as more serious forms of misconduct. Conversely, falsification which can be shown to have given effect to the client’s instructions will generally be considered to be less serious misconduct.

(b) Client Harm

28. There is no evidence of client harm. The signature falsification that the Respondent made on the KYC form did not alter the client’s investment intentions.

(c) Benefits Received by the Respondent

29. As stated in paragraph 22 of the Settlement Agreement:

“There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above, beyond the commissions or fees he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.”

(d) Deterrence

30. This is the area which caused the Hearing Panel the most concern. After reviewing the Settlement Agreement and hearing the submissions of Counsel for the MFDA Staff, there was no doubt in our minds that Rule 2.1.1 had been breached. It is also clear to us that the events which have transpired since December 22, 2014, when the Respondent admitted to the falsification, including the present proceedings and the proposed penalty, will act as a specific deterrent to the Respondent.

31. The concern of the Hearing Panel lies in the area of general deterrence, specifically whether the proposed three month prohibition from conducting securities related business will reinforce the message that the falsification of a client’s signature is not tolerated by the MFDA and the mutual fund industry, even in the absence of client harm. After reviewing all of the submissions, both written and oral, including previous Decisions made in similar cases, we concluded that the proposed penalty does fall within the reasonable range of appropriateness, albeit at the low end of the range.

(e) The Respondent’s Past Conduct Including Prior Sanctions

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

(f) The Respondent’s Recognition of the Seriousness of the Misconduct

33. The Respondent expressed extreme remorse for his actions. He made no attempt to justify or excuse his conduct. He co-operated with Staff throughout the investigation and prosecution of this matter.

34. In addition, 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 proceeding.

(g) Previous Decisions Made in Similar Cases

35. Staff Counsel referred us to the following Decisions:

- (a) *Wise (Re)*, [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201213, Panel Decision dated October 16, 2012;
- (b) *Barnai (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201325, Panel Decision dated March 17, 2015; and
- (c) *Gowing (Re)*, [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201560, Order dated January 28, 2016.

36. In the Gowing case, we were only provided with a copy of the Order, which was issued on January 28, 2016, as, apparently, no Reasons have, as yet, been released. The factual circumstances are similar to the case before us, as in Gowing the Respondent falsified one client signature on an account form. The Hearing Panel approved a Settlement Agreement providing for, *inter alia*, a three month prohibition.

37. The recent Decision by an experienced Hearing Panel, in similar circumstances, factored into our consideration as to whether the proposed penalty fell within the reasonable range of appropriateness.

G. DECISION

38. As indicated above, after a careful review of the Settlement Agreement, the precedent cases and the written and oral submissions of the parties, we concluded that it was in the public interest that the Settlement Agreement be accepted.

DATED this 3rd day of June, 2016.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.
Chair

“Darrell Bing”

Darrell Bing
Industry Representative

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