



**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: Jade Truman Kaiser Mason**

Heard: March 15, 2012 in Halifax, Nova Scotia  
Reasons for Decision: April 10, 2012

**REASONS FOR DECISION**

Hearing Panel of the Atlantic Regional Council:

The Hon. D. Merlin Nunn, Q.C.	Chair
Susan Nixon	Industry Representative
Scott M. Kay	Industry Representative

Appearances:

Lyla Simon	)	Counsel, Mutual Fund Dealers Association of
	)	Canada (“MFDA”)
Jade Truman Kaiser Mason	)	Respondent, appeared personally
	)	

1. On January 11, 2012, this matter was set down for a hearing on the merits of the matters to take place on March 15, 2012. All required notices were given to the parties and the public.

2. However, on March 8, 2012, the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Settlement Hearing for March 15, 2012 in this matter. Again, this Notice was given to all concerned, including the public.

3. In attendance at this March 15 hearing were Ms. Lyla Simon, counsel of MFDA staff, the Respondent, Jade Mason, several people from the Nova Scotia Securities Commission and a media person.

4. The first matter raised was, of course, one of timeliness as this latter Notice was given only seven days prior to the hearing and Rule 15.2(1) of the MFDA provides in part:

“... A Hearing Panel shall not consider a Settlement Agreement unless at least 10 days notice of the settlement hearing has been given ...”

5. Counsel for MFDA referred the Panel to Rule 1.3(1) of the MFDA Rules of Procedure which provides:

“These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with requirements of fairness.”

6. Also Rule 1.5(b) provides that a Panel may:

“...waive or vary any of these Rules, at any time, on such terms as it considers appropriate.”

7. And Rule 2.2 provides that the time for the performance of any obligation under the Rules of Procedure may be extended or abridged:

“...by a Panel, at any time on such terms as it considers appropriate.”

8. The Panel had to decide this matter at the outset as, if the 10 day requirement was not waived and the time reduced to the seven days notice given, the matter could not proceed.

9. In considering this matter the Panel was advised that the Respondent was satisfied with the Notice and he wished to go ahead with the hearing. Secondly, and a major point concerning the time limit, is the fact that his hearing has been scheduled since January 11, 2012 with Notices given to all concerned. The only difference was that it was to be a hearing on the merits which was altered to a Settlement Hearing though the Notice for that was three days short of the requirement of Rule 15.2(1). Clearly anyone having an interest, aside from the parties, was well aware of the March 15 date. No such person was in attendance nor was any such complaint raised.

10. As well, the Panel was advised that nobody suffered any harm in any way by the actions of the Respondent alleged here.

11. Clearly, to require a new hearing would involve a very significant extra cost as is referred to in Rule 1.3(1) which would serve no useful purpose and the Panel is satisfied that such should be avoided in this matter.

12. Secondly, there is ample reason to waive the requirement of 10 days notice as the Panel is empowered to do by virtue of Rule 1.5(b), as the whole situation here clearly indicates that all concerned with the matter are in attendance and no objections whatsoever have been made to the Panel continuing the hearing and no other rights or interests exist.

13. The Panel, therefore, orders that the time limit required by Rule 15.2(1) is waived in the circumstances present here for the reasons stated and considering that the long-established date of March 15, 2012 is the same in both Notices so that anyone affected by the shorter notice could still attend to voice any objection to it and nobody did.

14. The Panel wishes to make it clear that even if it did not waive the 10 day requirement, it would have abridged the 10 day period to seven days applying Rule 2.2 so that the matter would proceed as scheduled for the same reasons set forth above.

15. Having so decided, the Panel accepted the Settlement Agreement as an exhibit and the hearing continued.

16. Since the hearing became a Settlement Hearing with the Settlement Agreement introduced as an exhibit, the Panel is aware that, except in rare and exceptional circumstances, it is bound to keep “within the four corners” of the Agreement in its considerations. There are good and valid reasons for this, such as to encourage settlement where possible in other situations, to avoid lengthy and unnecessary hearings and the expense involved and to expeditiously deal with allegations so that the person involved can get on with his or her life. There were no such rare or exceptional circumstances here.

17. In order for this decision to have any meaning to the parties and at large, the facts upon which it is based must be set out. To keep within the four corners of the Settlement Agreement, the best approach is to set out the facts as indicated in the Agreement itself. Not all of the Agreement needs to be set out here as some sections are basically housekeeping. However, for purposes of clarity the headings and numbers of paragraphs will be retained. The Agreement provides:

#### **“IV. AGREED FACTS**

##### **Registration History**

6. The Respondent was registered in the province of Nova Scotia as a mutual fund salesperson with Sun Life Financial Services (Canada) Inc. (“Sun Life”) from October 12, 2006 until February 15, 2010, at which time he was terminated by the Member as a result of the events described herein.

7. At all material times, the Respondent was also licensed to sell life insurance through Sun Life Financial Distributors (Canada) Inc. (“SLFDI”), a related company of the Member.

8. Sun Life has been a Member of the MFDA since February 14, 2002.

## **Falsifying Client Signatures and Falsely Signing as a Witness**

### General facts applicable to all clients

9. In May of 2009, SLFDI personnel identified irregularities with respect to a client's signature on an insurance document pertaining to a client for whom the Respondent provided insurance services. Sun Life's investigation department (which provides investigation services to both Sun Life and SLFDI) initiated an investigation and reviewed client account documents for both life insurance and mutual fund clients whose accounts were serviced by the Respondent. The investigation revealed signature irregularities on client account documents belonging to a total of 33 clients, 10 of whom were mutual fund clients.

10. Sun Life sent letters to the 10 mutual fund clients enclosing copies of the client account documents containing the signature irregularities. Five of the mutual fund clients responded to Sun Life confirming that they had not placed their signatures on some of the client account documents. The five mutual clients were clients AC, JC, IC, TL and DJ.

11. During an interview with Sun Life staff, the Respondent admitted that he had falsified the signatures of four of the clients, AC, JC, IC and TL, on client account documents and then submitted those documents to Sun Life for processing after first obtaining permission from the clients to sign the client account documents on their behalf.

12. In each case, the Respondent states that he falsified the clients' signatures due to his work volume and, in some instances, as a matter of convenience because of the geographical distance between his office (*sic and*) the location of the clients. Further, in some instances, the Respondent states that he falsified a client's signature in order to rectify deficiencies or errors with, or irregularities in the filing of, previous versions of the documents which the Respondent claims were signed by the clients.

13. Sun Life contacted all five of the affected clients and reviewed the forms at issue with them. Each client stated that the forms at issue were consistent with the client's intentions. Neither Sun Life nor MFDA Staff are aware of any client complaints relating to the falsified client signatures.

Particulars of the falsified client signatures

*Client AC*

14. The Respondent falsified the signature of client AC on two client account documents:

- a) Education Savings Plan Form for Electronic Signature dated May 22, 2008; and
- b) Limited Trade Authorization form, dated May 22, 2008.

15. In addition to falsifying client AC's signatures on the two client account documents described above, the Respondent also signed as the witness to client AC's signature on the Limited Trade Authorization form dated May 22, 2008 (which the Respondent had falsified). The Respondent therefore falsely witnessed client AC's signature on the document.

*Client IC*

16. The Respondent falsified the signature of client IC on two client account documents:

- a) Tax-Free Savings Account form for electronic signature dated May 5, 2007; and
- b) Limited Trade Authorization form dated May 5, 2007

17. In addition to falsifying client IC's signatures on each of the two client account documents described above, the Respondent also signed as the witness to client IC's

signature on the Limited Trade Authorization form dated May 5, 2007 (which the Respondent had falsified). The Respondent therefore falsely witnessed client IC's signature on the document.

*Client TL*

18. The Respondent falsified the signature of client TL on four client account documents:

- a) Education Savings Plan Form for Electronic Signature (Account # 1);
- b) Limited Trade Authorization form (Account #1);
- c) Education Savings Plan Form for Electronic Signature (Account # 2); and
- d) Limited Trade Authorization Form (Account # 2).

19. In addition to falsifying client TL's signatures on the four client account documents described above, the Respondent also signed as the witness to client IC's (*sic TL's*) signatures on each of the Limited Trade Authorization forms listed above (which the Respondent had falsified). The Respondent therefore falsely witnessed client TL's signature on the document.

*Clients DJ and GJ*

20. The Respondent falsified the signature of Client DJ on the following account document:

- a) Signature Form for Electronic Application dated December 5, 2007 (the "Signature Form")

21. This document also contains the purported signature of client DJ's spouse, client GJ, whose signature the Respondent also falsified.

22. The Respondent falsified client GJ's signature on another document that:

- a) Limited Trade Authorization form dated December 5, 2007

23. The Respondent also signed as the witness to client GJ's signature on the Limited Trade Authorization form dated December 5, 2007 (which the Respondent had falsified). The Respondent therefore falsely witnesses client GJ's signature on the document.

24. Effective February 15, 2010, Sun Life terminated the Respondent for falsifying client signatures.

### **Mitigating Factors**

25. The Respondent has not been the subject of a previous MFDA disciplinary proceeding.

### **The Respondent's Representations**

26. The Respondent regrets the contravention of MFDA *Rules* that are described in this Settlement Agreement.

## **V. CONTRAVENTIONS**

27. The Respondent admits that between October 12, 2006 and February 15, 2010, he failed to observe high standards of ethics and conduct in the transaction of business contrary to MFDA Rule 2.1.1 by:

- a) falsifying the signatures of at least five clients on a total of at least 10 client account documents; and
- b) falsely signing as a witness to three client's signatures on four client account documents where he also falsified the client's signatures on the documents.

## VI. TERMS OF SETTLEMENT

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

- (a) the Respondent shall pay a fine in the amount of \$2,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (b) the Respondent shall pay costs in the amount of \$2,500, attributable to the investigation and settlement of this matter, pursuant to section 24.2 of MFDA By-law No. 1;
- (c) the Respondent shall be prohibited from conducting securities related business while in the employ of, or associated with a Member of the MFDA for a period of six months from the date of the Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- (d) The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rule 2.1.1.; and
- (e) the Respondent will attend the Settlement Hearing in person.”

18. The agreement as to penalties in the Settlement Agreement brings into play section 24.1.1 of By-law No. 1 of the MFDA which indicates that a Hearing Panel of the applicable Regional Council has the power to impose upon an Approved Person one or more of the listed penalties. In the present matter, the MFDA and the Respondent agree that the Respondent, in the accepted Settlement Agreement, shall be deemed to have been penalized by the Hearing Panel pursuant to Section 24.1.1 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with Section 24.5 of the same By-law.

19. Turning now to the essential facts relating to the allegations made, the Panel must make certain determinations as to whether the Settlement Agreement is acceptable. As counsel for MFDA indicated, the Panel must take into account a number of considerations as have been indicated by other MFDA panels over the years, namely whether the Settlement Agreement:

- (a) is in the public interest and whether the penalty will protect investors;

- (b) is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- (c) addresses the issues of both specific and general deterrence;
- (d) will prevent the type of conduct described in the settlement agreement from occurring again in the future; and
- (e) will foster confidence in the integrity of the Canadian capital markets, the MFDA, and the regulatory process itself.

20. It is well established in Canada that the primary goal of securities regulation is the protection of investors and includes the goal of fostering public confidence in the capital markets and the securities industry (see *PEZIM v. British Columbia (Superintendent of Brokers)* [1994] 2 S.C.R. 557 at paras 59 and 68).

21. Without belabouring the obvious, it is well established by this time that Hearing Panels have some discretion in assessing the penalties listed in the MFDA lists of penalties. In the present matter, the recommended penalties for a breach of Rule 2.1.1 relating to the Standard of Conduct a Member or Approved Person must observe, namely:

- (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 Corporation;

are:

- (a) Fine: Minimum of \$5,000;
- (b) Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course);
- (c) Suspension; and
- (d) Permanent prohibition in egregious cases.

22. The penalties actually agreed upon in the Settlement Agreement are:
- (a) A fine of \$2,500;
  - (b) Costs in the amount of \$2,500; and
  - (c) Prohibition from conducting securities related business in the employ of a MFDA Member for six months from the date of the Order. In this matter the Order setting these penalties was granted by the Panel at the conclusion of the Hearing on March 15, 2012.
23. The Panel has taken into account a number of factors in determining whether the Settlement Agreement should be accepted and whether the penalties agreed upon are appropriate, fair and proper in the circumstances.
24. Those factors are:
- (a) The Respondent readily admitted his misconduct and has cooperated throughout the investigation;
  - (b) When contacted, the clients involved stated that the forms submitted were consistent with their intentions;
  - (c) No complaints have been filed relating to the falsified signatures;
  - (d) The Respondent had less than five years in mutual fund sales and had no disciplinary proceedings prior to the instant ones;
  - (e) The Respondent has admitted his misconduct and by entering into the Settlement Agreement has saved the MFDA the time and expense of a full hearing on the merits;
  - (f) The Respondent indicated that he falsified the signatures because of work volume and as a matter of convenience, because of the geographical distance between his office and the clients' location. As well, the Respondent stated he falsified a client's signature in order to rectify deficiencies or errors on previous documents;
  - (g) The Respondent regrets his misconduct; and
  - (h) His misconduct resulted in his termination from the Member.

25. Based upon those factors and the earlier comments in this decision relating to public policy on Settlement Agreements, the Panel is satisfied that acceptance of the Agreement is in the public interest and the Agreement itself, while it clearly sets out the seriousness of the conduct, is a fair and equitable way to deal with the misconduct so as to avoid a lengthy hearing on the merits.

26. With regard to the penalties agreed upon, the Panel finds that the factors listed in items (a) to (g) in paragraph 24 above are mitigating factors that any fair-minded tribunal would take into account. The Panel, in the circumstances here, is satisfied that the penalties agreed upon, though they constitute a departure from the MFDA suggested penalties for breaches of Rule 2.2.1 of the MFDA Rules of Procedure, are appropriate, reasonable and proportionate to the misconduct of the Respondent. There can be little doubt that they properly address the issues of specific and general deterrence and will foster confidence in the integrity of the Canadian capital markets, the MFDA, and the regulatory process itself. They also are in line with a number of other Panel decisions filed in this type of matter across Canada.

27. The Settlement Agreement, the subject of this hearing, is accepted by the Hearing Panel in its entirety, including the penalties agreed upon which we deemed appropriate in the circumstances set forth in the Agreement.

28. Before concluding the Panel wishes to make it very clear that such acts of signing another person's name constitutes forgery, a very serious offence, with potentially harmful consequences to oneself, to clients, to the Member firm and the securities industry as a whole. It shows the lack of honesty required of a professional in the securities industry. These comments are not original to this Panel. They are referred to by other Panels (see *Re Bell*, a 2005 decision in Alberta, and *Re Lamontagne*, a 2009 Alberta decision). It must be driven home that no excuse is acceptable to explain this type of forgery and the consequences can be devastating. The Panel suggests that any educational material for Members and their employees should highlight forgery and its consequences.

**DATED** this 10<sup>th</sup> day of April, 2012.

“Merlin Nunn”

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The Hon. D. Merlin Nunn, Q.C.,  
Chair

“Susan Nixon”

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Susan Nixon,  
Industry Representative

“Scott Kay”

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Scott M. Kay,  
Industry Representative