



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: Larry Denny McBain

Heard: November 30, 2017 in Toronto, Ontario

Decision: November 30, 2017

Reasons for Decision: December 8, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC	Chair
Brigitte J. Geisler	Industry Representative
Guenther W. K. Kleberg	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Keir Turner)	Counsel for the Respondent
)	
Larry Denny McBain)	Respondent, in person
)	

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated August 11, 2017 (“Settlement Agreement”) between the staff of the MFDA and Larry Denny McBain (“Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in section III of the agreement.

Contraventions

2. The Respondent admitted that:
- a) between October 2011 and August 2015, he obtained, possessed, and in some instances, used to process transactions, eight (8) pre-signed account forms in respect of five (5) clients, contrary to MFDA Rule 2.1.1; and
 - b) between October 2011 and August 2015, he, acting in the capacity as branch manager, reviewed and approved the use of six (6) pre-signed account forms, contrary to MFDA Rules 2.5.5(f) and 2.1.1.

Agreed penalties

3. The agreed penalties were: i) a fine of \$5,500, payable in installments; ii) a one month suspension from acting in the capacity of a branch manager; (iii) a requirement to successfully complete a branch manager’s course prior to being re-designated as a branch manager; and iv) a costs award of \$2,500.

Considerations

4. 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

5. Obtaining, possessing and using to process transactions pre-signed account forms is conduct contrary to MFDA Rule 2.1.1.

6. Improperly approving as branch manager the use of pre-signed account forms is conduct contrary to MFDA Rules 2.5.5(f)* [*since renumbered] and 2.1.1.

Other considerations in determining acceptability of agreed penalties

7. 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.

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

9. On November 27, 2015, the Respondent's Member issued a reprimand to the Respondent and required him to complete an educational program created by his Member.

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, 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 8th day of December, 2017.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Brigitte J. Geisler”

Brigitte J. Geisler
Industry Representative

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

DM 587444

Schedule "1" Settlement Agreement

File No. 201735



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Re: Larry Denny McBain

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Larry Denny McBain ("Respondent"), consent and agree to settlement of this matter by way of this agreement ("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 MFDA:

- a) between October 2011 and August 2015, the Respondent obtained, possessed and, in some instances, used to process transactions, 8 pre-signed account forms in respect of 5 clients, contrary to MFDA Rule 2.1.1; and
- b) between October 2011 and August 2015, the Respondent, acting in the capacity as branch manager, reviewed and approved the use of 6 pre-signed account forms, contrary to MFDA Rules 2.5.5(f)¹ and 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 \$5,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (the “Fine”);
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 (“Costs”);
- c) the Respondent shall pay the Fine and Costs in certified funds as follows:
 - i. \$1,000 payable upon entering into the Settlement Agreement;
 - ii. \$1,000 payable on the last business day of the first month following the Settlement Hearing;
 - iii. \$1,000 payable on the last business day of the second month following the Settlement Hearing;
 - iv. \$1,000 payable on the last business day of the third month following the Settlement Hearing;
 - v. \$1,000 payable on the last business day of the fourth month following the Settlement Hearing;
 - vi. \$1,000 payable on the last business day of the fifth month following the Settlement Hearing;

¹ Rule 2.5.5(f) has been re-numbered during the period of the Respondent’s conduct described in this Settlement Agreement. Prior to September 2013, the Respondent’s conduct was contrary to MFDA Rule 2.5.5(d).

- vii. \$1,000 payable on the last business day of the sixth month following the Settlement Hearing; and
 - viii. \$1,000 payable on the last business day of the seventh month following the Settlement Hearing;
-
- d) if the Respondent fails to make any of the payments described above in paragraph 5(a)–(c), any outstanding balance of the Fine and Costs shall become immediately due and payable to the MFDA and the Respondent shall be immediately suspended from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the Fine and Costs owed by the Respondent is paid to the MFDA pursuant to s. 24.3.13(c) of MFDA By-law No. 1;
 - e) the Respondent shall be suspended from acting in the capacity of branch manager for a period of 1 month pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
 - f) upon entering into the Settlement Agreement and prior to the Respondent being re-designated as a branch manager, he shall successfully complete the branch manager’s course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
 - g) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - h) 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 in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with PFSL Investments Canada Ltd. (“PFSL”), a Member of the MFDA.

8. Since December 2014, PFSL has designated the Respondent as a branch manager.

9. At all material times, the Respondent conducted business in the Toronto, Ontario area.

Pre-Signed Account Forms

10. At all material times, PFSL’s policies and procedures prohibited its Approved Persons, including the Respondent, from using pre-signed account forms.

11. Between October 2011 and August 2015, the Respondent obtained, possessed and, in some instances, used to process transactions, 8 pre-signed account forms in respect of 5 clients.

12. The pre-signed account forms consisted of redemption request forms, know-your-client forms, and customer service forms.

Approval of Pre-Signed Account Forms

13. Between October 2011 and August 2015, the Respondent, acting in the capacity as branch manager, reviewed and approved the use of 5 pre-signed account forms described above in paragraph 11.

PFSL's Investigation

14. On or about August 20, 2015, during the course of an audit, PFSL's compliance department identified the pre-signed account forms that are the subject of this Settlement Agreement.

15. As part of its investigation, PFSL reviewed a selection of client files serviced by the Respondent and sent letters to each of the affected clients and to a selection of non-affected clients serviced by the Respondent in order to determine if the Respondent had engaged in unauthorized trading. PFSL received no responses to its letters.

16. On November 27, 2015, PFSL issued a reprimand to the Respondent and required that he complete an educational program created by PFSL.

Additional Factors

17. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above other than the commissions or fees that he would ordinarily be entitled to receive had the transactions been completed in the proper manner.

18. There is no evidence of client loss or lack of authorization.

19. The Respondent states that he is unable to pay any additional amounts towards a Fine.

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

21. 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 allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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 11th day of August, 2017.

“Larry Denny McBain”

Larry Denny McBain

“BP”

Witness – Signature

BP

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. 201735



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**IN THE MATTER OF A SETTLEMENT HEARING
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Re: Larry Denny McBain

ORDER

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

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (“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 October 2011 and August 2015, the Respondent obtained, possessed and, in some instances, used to process transactions, 8 pre-signed account forms in respect of 5 clients, contrary to MFDA Rule 2.1.1; and

- b) between October 2011 and August 2015, the Respondent, acting in the capacity as branch manager, reviewed and approved the use of 6 pre-signed account forms, contrary to MFDA Rules 2.5.5(f)² and 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 \$5,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (the “Fine”);
2. the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1 (“Costs”);
3. the Respondent shall pay the Fine and Costs in certified funds as follows:
 - a) \$1,000 payable upon entering into the Settlement Agreement;
 - b) \$1,000 payable on the last business day of the first month following the Settlement Hearing;
 - c) \$1,000 payable on the last business day of the second month following the Settlement Hearing;
 - d) \$1,000 payable on the last business day of the third month following the Settlement Hearing;
 - e) \$1,000 payable on the last business day of the fourth month following the Settlement Hearing;
 - f) \$1,000 payable on the last business day of the fifth month following the Settlement Hearing;
 - g) \$1,000 payable on the last business day of the sixth month following the Settlement Hearing; and

² Rule 2.5.5(f) has been re-numbered during the period of the Respondent’s conduct described in this Settlement Agreement. Prior to September 2013, the Respondent’s conduct was contrary to MFDA Rule 2.5.5(d).

h) \$1,000 payable on the last business day of the seventh month following the Settlement Hearing;

4. If the Respondent fails to make any of the payments described above in paragraph 5(a) – (c), any outstanding balance of the Fine and Costs shall become immediately due and payable to the MFDA and the Respondent shall be immediately suspended from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the Fine and Costs owed by the Respondent is paid to the MFDA pursuant to s. 24.3.13(c) of MFDA By-law No. 1;

5. The Respondent shall be suspended from acting in the capacity of branch manager for a period of 1 month pursuant to s. 24.1.1(c) of MFDA By-law No. 1;

6. Upon entering into the Settlement Agreement and prior to the Respondent being re-designated as a branch manager, he shall successfully complete the branch manager's course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;

7. The Respondent shall in the future comply with MFDA Rule 2.1.1; and

8. 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]