



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: Brenden Mernagh

Heard: March 31, 2016 in Toronto, Ontario
Reasons for Decision: April 8, 2016

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C, Q.C.	Chair
Kenneth P. Mann	Industry Representative
Matthew Onyeaju	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Brenden Mernagh)	By teleconference
)	

Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on March 31, 2016. The full Settlement Agreement, dated January 25, 2016, entered into between Staff of the MFDA and Brenden Mernagh (“Mr. Mernagh” or the “Respondent”) is available on the MFDA website and will not be set out in detail here. Mr. Mernagh appeared at the Settlement Hearing by teleconference.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the March 31, 2016, hearing, with reasons to follow. These are our reasons for the decision.

3. The Respondent has been registered since 2011 as a mutual fund salesperson (now known as a Dealing Representative) in Ontario with TD Investment Services Inc., (“TD”), a member of the MFDA. Prior to December 2013, the Respondent worked with TD on a part-time basis during university. At all material times, the respondent conducted business in the Mississauga, Ontario, area.

4. TD terminated the Respondent’s employment as a result of the misconduct that is the subject of this Settlement Agreement. The Respondent is not currently registered in the securities industry in any capacity.

Alleged Conduct

5. Proceedings against the Respondent were commenced by a Notice of Settlement Hearing, dated February 24, 2016.

6. In the Settlement Agreement (paragraph 4), the Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA: “between December 2013 and January 2014, the Respondent falsified the signatures of 10 clients on 13 account forms, contrary to MFDA Rule 2.1.1.”.

7. The Respondent met the 10 clients between December 2013 and January 2014 for the purpose of completing trades. At these meetings, the 10 clients signed the trade forms required to complete the transactions.

8. The respondent did not realize, however, that certain supplementary documents, relating to suitability or internal transfers, also had to be signed by the clients. After the trades were submitted to TD for processing, the Branch Compliance Officer notified the Respondent of his failure to submit the supplementary documents.

9. In order to rectify the issue, the Respondent falsified the signatures of 10 clients on 13 supplemental documents, which he then submitted to TD for processing.

10. The Respondent's Branch Manager later identified a suspect signature on one of the supplementary documents and investigated the Respondent's conduct concerning other files. The Respondent states in the Settlement Agreement that "he was a relatively inexperienced fulltime employee at the time of the misconduct [and] believed that if he did not provide the Supplemental Documents immediately he would suffer negative consequences to his employment".

Terms of Settlement

11. Staff and the Respondent agreed to the following terms of settlement:

- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ or associated with any Member of the MFDA for a period of 6 months from the date of the settlement hearing, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$1,000 pursuant to s. 24. 2 of MFDA By-law No. 1 and
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1.

12. Rule 2.1.1 – the “Standard of Conduct” provision – provides, in part:

“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;
[and]
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.”

Falsifying Signatures

13. The MFDA has for many years warned Members and Approved Persons that obtaining pre-signed forms or falsifying a client’s signature is improper.

14. Falsifying a signature is particularly serious because the client may not be aware that a form has been signed. In the present case, some of these forms related to suitability. Suitability of product forms through “know your client” forms are crucial in the securities industry to help ensure that trades meet the needs of clients. They also assist in the supervision of the activities of an Approved Person.

15. There are many reported MFDA and IIROC cases relating to pre-signed forms and falsifying clients’ signatures. See, for example, *Re Richardson* (File No. 201536); *Re Ewart* (File No. 201528); *Re Byce* (File No. 201311); *Re Price* (File No. 200814); *Re Bell* ([2005] I.D.A.C.D. No 15); and *Re Lamontagne* ([2009] IIROC No. 6). See also the recent Ontario Securities Commission decision involving falsifying signatures: *Re Reaney* (July 13, 2015).

16. As the Panel stated in *Re Richardson* (File No. 201536, paragraph 9): “The use of pre-signed account forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.” These dangers are at least equally – if not more – applicable to falsifying signatures.

17. We agree with the position taken by MFDA Staff:

“MFDA Staff considers use of a falsified form to be a more serious violation of the contravention of the standard of conduct under MFDA Rule 2.1.1 than a pre-signed form. The falsification of a client signature or initials is particularly serious....Unlike pre-signed forms, where the client knows he or she is signing an incomplete form to be used in some way, in the case of a form falsified by the Approved Person, the possibility exists that the client is unaware of the Approved Person’s actions.”

Acceptance of Settlement Agreement

18. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

19. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.

20. A six month suspension is a significant penalty and indicates the seriousness of the conduct.

21. There is no evidence of client harm. No clients have filed complaints in respect of the misconduct. The affected clients all signed the related trade documents in person. There is no evidence that the supplemental documents did not accurately reflect the clients’ instructions.

22. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct, recognizes its seriousness, and has exhibited remorse.

23. 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. Further, as stated above, the Respondent is relatively new to the securities industry.

24. The penalty imposed is not out of line with recent cases cited by counsel. See, with respect to falsifying clients' signatures: *Re Gowing* (three month suspension and \$1,000 penalty) (Settlement Agreement accepted by Panel on January 28, 2016); and *Re Li* (four month suspension and no order as to costs) (File no. 201527). The penalty is also consistent with the MFDA Penalty Guidelines.

25. The Respondent has never been the subject of a disciplinary proceeding by the MFDA and cooperated with Staff during its investigation into his conduct. By entering into the Agreement, the Respondent saved the MFDA the time, resources, and expense associated with conducting a full hearing of the allegations.

26. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.”

27. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter.

28. As a recent Panel stated (*Re Keshet*, File No. 201419 at paragraph 7): “It is well established that hearing panels should not interfere lightly in negotiated settlements and should

not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness.” There are many similar statements by MFDA Panels.

29. The penalty agreed to in this case falls within “a reasonable range of appropriateness.”

30. For the above reasons we accepted the Settlement Agreement.

DATED this 8th day of April, 2016.

“Martin L. Friedland”

Martin L. Friedland, C.C., Q.C.
Chair

“Kenneth P. Mann”

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Industry Representative

“Matthew Onyeaju”

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