



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: Inocencia Bagongon Minierva

Heard: March 24, 2020 in Vancouver, British Columbia

Decision: March 24, 2020

Reasons for Decision: April 8, 2020

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield
Holly A. Millar
Darryl Gossen

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Inocencia Bagongon Minierva)	Respondent, by teleconference
)	
)	

I. INTRODUCTION

1. On March 24, 2020, the Hearing Panel approved a settlement agreement concluded on January 9, 2020 (“Settlement Agreement”), between the Mutual Fund Dealers Association of Canada (“MFDA”) and Inocencia Bagongon Minierva (the “Respondent”). The Settlement Agreement is annexed as Schedule “1” to these Reasons. The Order provides that the Respondent shall forthwith pay a fine of \$1,000 and costs of \$2,500 as a consequence of obtaining, possessing, and in some instances using to process transactions, 15 pre-signed account forms in respect of 9 clients on which information had been altered without the clients initialing the alterations, contrary to MFDA Rule 2.1.1; and by obtaining, possessing and in some instances using to process transactions, 13 pre-signed account forms in relation to 8 clients, contrary to MFDA Rule 2.1.1.
2. The agreed facts are set forth in the Settlement Agreement as are the contraventions and the agreed penalty.

II. ANALYSIS

3. This is an instance in which a dealing representative has engaged in the use of pre-signed forms notwithstanding regular communications from the MFDA reminding members and dealing representatives that their use is prohibited.
4. It is well known that the use of pre-signed forms constitutes a violation of MFDA Rule 2.1.1 that prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each member and approved person deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. Hearing panels have continually held that obtaining or using pre-signed account forms is a contravention of the standard of conduct demanded under MFDA Rule 2.1.1.
5. The use of pre-signed forms is prohibited because they may adversely affect the integrity and reliability of documents; destroy the audit trail; impact the ability of approved persons to produce valid documentation to support transactions that come into question; mislead member supervisory personnel; negatively affect the credibility of the approved person; negatively affect member complaint handling; and facilitate other misconduct such as unauthorized trading, fraud

and the misappropriation of funds: see MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017). The prohibition applies whether or not the client was aware of, or authorized the use of, the forms and whether or not the forms were actually used by the approved person for discretionary trading or other improper purposes.

6. The accepted principle is that a hearing panel will not reject a settlement agreement unless the proposed penalty falls outside the reasonable range of appropriateness. As stated by counsel, settlements advance the MFDA's regulatory objective of protecting the public by proscribing activities that are harmful to the public while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent: see *Re Sterling Mutuals Inc.*, MFDA File No. 200820, August 21, 2008, Ontario Regional Council, and *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484, at para. 31.

7. When considering whether a settlement falls within the reasonable range of appropriateness the Panel will consider criteria identified in other cases, namely, whether the settlement is in the public interest and the penalty imposed will protect investors; whether the settlement is reasonable and proportionate having regard for the Respondent's conduct; whether the settlement addresses the issues of specific and general deterrence; whether the settlement will prevent recurrence of the type of conduct in question; and whether the settlement will foster confidence in the integrity of the MFDA and the regulatory process itself: see *Re: Jacobson*, 2007 MFDA 27, p. 9.

8. With regard to the penalty in a particular case, the assessment of reasonableness will take into account a number of factors including the seriousness of the allegations; the Respondent's past conduct; whether the Respondent recognizes the seriousness of the improper activity; the benefits derived from the improper activity; the risk to investors and the capital markets should the Respondent continue to participate in the mutual fund industry; the damage to the integrity of the capital markets occasioned by the Respondent's conduct; the need for specific and general deterrence; prior decisions in comparable circumstances, and any factors unique to the Respondent.

9. In this instance, counsel cites two comparables: *Re: Nerisa Lat Villegas*, MFDA File No. 201872, November 8, 2018, Prairie Regional Council, imposing a fine of \$10,000 and costs of \$2,500 for the alteration of 27 pre-signed forms in respect of 17 clients; and *Re: Boassaly*, MFDA

File No. 201918, March 28, 2019, Central Regional Council, imposing a fine of \$12,500 and costs of \$2,500 for the possession and use of 11 pre-signed forms in respect of 6 clients; the alteration of 6 account forms in respect of 4 clients; and the improper use or alteration of signatures.

10. The Panel is mindful of the fact that the penalty in this instance is markedly less than the norm. MFDA Staff advised the Panel such was the case because of extenuating circumstances: Staff was satisfied that the Respondent did not have the ability to pay, she was no longer engaged in the industry, and she was suffering from a serious illness.

11. Having regard for all of the relevant circumstances, including the factors unique to the Respondent's circumstances, the Panel considered it reasonable and in the public interest to approve the Settlement Agreement.

12. For the foregoing reasons, the Settlement Agreement is approved.

DATED this 8th day April, 2020.

"Ian H. Pitfield"

Ian H. Pitfield
Chair

"Holly Millar"

Holly Millar
Industry Representative

"Darryl Gossen"

Darryl Gossen
Industry Representative

Schedule “1”

Settlement Agreement

File No. 202004



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: Inocencia Bagongon Minierva

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Inocencia Bagongon Minierva (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 March 2015 and June 27, 2017, the Respondent altered 15 account forms in respect of 9 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
 - b) between April 29, 2014 and February 20, 2018, the Respondent obtained, possessed and in some instances used to process transactions, 13 pre-signed account forms in relation to 8 clients, contrary 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 \$1,000 in certified funds pursuant to section 24.1.1(b) of By-law No. 1;
 - b) the Respondent shall pay costs in the amount of \$2,500 in certified funds pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;
 - c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - d) the Respondent will attend in person at 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. Between April 29, 2014 and August 30, 2018, the Respondent was registered in British Columbia as a dealing representative with Sun Life Financial Services (Canada) Inc. (the “Member”), a Member of the MFDA.
8. On August 30, 2018, the Member terminated the Respondent’s registration and she is no longer in the securities industry in any capacity.
9. At all material times, the Respondent carried on business in the Maple Ridge, British Columbia area.

Altered Forms

10. Between March 2015 and June 27, 2017, the Respondent altered 15 account forms in respect of 9 clients by altering information on the account forms without having the clients initial the alterations.
11. The Respondent altered the account forms by handwriting changes without the client initialing the documents to show the alteration was approved.
12. The altered account forms included new account application forms, transfer authorization forms, Know-Your-Client (“KYC”) update forms, direction for payment to RESP forms and Education Savings Grant forms.
13. The alterations the Respondent made to the account forms included alterations to fund codes, KYC information, client information and withdrawal amounts.

Pre-Signed Forms

14. At all material times, the Member’s policies and procedures prohibited its Approved Persons from using pre-signed account forms.
15. Between April 29, 2014 and February 20, 2018, the Respondent obtained, possessed and in some instances used to process transactions, 13 pre-signed account forms in relation to 8 clients.
16. The pre-signed account forms included, new account application forms, KYC update forms, consents for electronic messages, transfer authorization form, pre-authorized chequing forms, and contact form and Canada Education Saving Grant forms.

Member Response

17. On June 4, 2018, the Member detected the pre-signed and altered forms that are the subject of this Settlement Agreement during a compliance review of all of the Respondent’s files.
18. On July 11, 2018, the Member placed the Respondent on strict supervision.
19. On August 30, 2018, the Member terminated the Respondent’s registration.

20. On October 16, 2018, the Member sent letters to all of the clients serviced by the Respondent enclosing the clients' portfolio statements and asked them to review the transactions to confirm the transactions were authorized and to advise whether they had any concerns. No clients responded with any concerns to the Member.

Additional Factors

21. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

22. There is no evidence of client loss in this matter or that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which she would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner.

23. There have been no client complaints in relation to the conduct described in this Settlement Agreement, and no evidence of unauthorized trading undertaken by the Respondent.

24. The Respondent has been diagnosed with a serious medical condition. Staff took the Respondent's medical condition into account when agreeing to the penalty in this matter. The Respondent is currently not employed, and has provided Staff with evidence showing that she has limited financial means. The Respondent acknowledges that if it were not for her limited financial means it would have been appropriate for her to be subject to a monetary penalty that is greater than the fine and costs amounts set out in this Settlement Agreement.

25. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to this settlement, has avoided the necessity of a full hearing on the merits.

IV. ADDITIONAL TERMS OF SETTLEMENT

26. 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.

27. 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.

28. 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.

29. 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 facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and 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.

30. 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.

31. 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.

32. 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 9th day of January, 2020.

“Inocencia Bagongon Minierva”
Inocencia Bagongon Minierva

“RM”
Witness – Signature

RM
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. 202004



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: Inocencia Bagongon Minierva

ORDER

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 Inocencia Bagongon Minierva (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 March 2015 and June 27, 2017, the Respondent altered 15 account forms in respect of 9 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between April 29, 2014 and February 20, 2018, the Respondent obtained, possessed and in some instances used to process transactions, 13 pre-signed account forms in relation to 8 clients, contrary 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 \$1,000 in certified funds, pursuant to section 24.1.1(b) of By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500 in certified funds, pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;
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]

DM 735070