Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

IN THE MATTER OF SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Imtiaz ("Tim") Mahamood Mohamed

Heard: December 3, 2012 in Toronto, Ontario
Reasons for Decision: December 21, 2012

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Hon. Stanley R. Kurisko, Q.C.	Chair
Glenda Towle	Industry Representative
Guenther W.K. Kleberg	Industry Representative

Appearances:

Lyla Simon	)	Counsel for the Mutual Fund Dealers Association
	)	of Canada
James Camp	)	Counsel for Imtiaz ('Tim") Mahamood Mohamed
	)	(the "Respondent")

1. The Staff of the Mutual Fund Dealers Association of Canada ("MFDA") and the Respondent entered into a Settlement Agreement which they negotiated pursuant to s. 24.4.1 of MFDA By-law No. 1. They submitted the Settlement Agreement to this Hearing Panel pursuant to Rule 15 of the MFDA Rules of Procedure for approval or rejection. After considering the Settlement Agreement, the other material filed and upon hearing the submissions made by Enforcement Counsel and by counsel for the Respondent, the Hearing Panel issued an Order accepting the Settlement Agreement. These are our reasons for making that Order.

AGREED FACTS

Registration History of the Respondent

2. From 1999 to November 3, 2007, when he was terminated for cause as a result of the events described herein, the Respondent was registered in Ontario as a mutual fund salesperson and branch manager with Dundee Private Investors Inc. ("Dundee").[1]

3. Commencing February 26, 2008,[2] the Respondent was re-registered in Ontario as a dealing representative in the categories of mutual fund dealer and exempt market dealer with Keybase Financial Group Inc. ("Keybase"), a Member of MFDA. He has remained with Keybase in this capacity to date.

4. In light of Dundee having terminated the Respondent, the Ontario Securities Commission ("OSC") approved his registration with Keybase subject to him providing a sworn affidavit outlining the circumstances that led to his termination. The affidavit that was provided by the Respondent is the subject of one of the admitted contraventions herein described in more detail at paragraphs 7-12 below. The OSC did not impose any further terms and conditions on the Respondent's re-registration.

Respondent's Misconduct

[1] From 1999 to 2002, the Respondent was registered with Dundee Private Investors Management Inc. Dundee Private Investors Inc. has been a Member of the MFDA since February 8, 2002, therefore, only the Respondent's conduct since February 8, 2002 is subject to MFDA jurisdiction and is contemplated herein.

[2] The Respondent became employed with Keybase on January 11, 2008. However, he was not registered until February 26, 2008.

5. On October 17, 2007 Dundee supervisory staff identified an irregularity with one of the Respondent's client's account-opening documents. Dundee made inquiries of the Respondent, and then arranged to audit the Respondent's branch.

6. From October 30, 2007 to November 1, 2007, Dundee supervisory staff carried out an audit at the Respondent's branch of all his client files and found, among other things, pre-signed forms and evidence of discretionary trading.

7. MFDA Staff conducted an investigation which revealed that the Respondent had (i) obtained pre-signed forms; (ii) engaged in discretionary trading which the clients were aware of and authorized; and (iii) swore an affidavit containing misleading information he provided to the OSC.

Pre-signed Forms

8. From 2002 to at least April 2007, the Respondent obtained 43 blank or partially completed pre-signed trade forms (some of which were undated) for 30 clients. He maintained these forms until November 1, 2007.

9. At the material time Dundee's policies and procedures prohibited Approved Persons from asking clients to sign blank documents of any kind and also prohibited Approved Persons maintaining pre-signed blank documents in client files.

Discretionary Trading

10. The Respondent's general practice was to meet with a client or speak with a client over the telephone to determine the client's investing intentions. He would have the client sign the completed forms in order to carry out the client's investing intentions. Additionally, many of the Respondent's clients held their accounts in nominee name or executed Limited Trade Authorization forms regarding their accounts held in client's name.

11. In some instances, however, the Respondent re-used pre-signed forms either by photocopying the already existing blank pre-signed form for the new trade or by whiting out the

trade instructions on an old already signed and populated trade form and entering a new date and new trade instructions. In all cases the Respondent would then submit the trade for processing.

12. There have been no client complaints and no known client losses concerning the discretionary trading engaged in by the Respondent. The last instance of discretionary trading occurred over seven years ago.

The Affidavit

13. In or about November 2007, the Respondent applied to the OSC to have his registration renewed in order to register with Keybase.

14. On December 4, 2007, the OSC sent the Respondent a letter inquiring as to the circumstances of his termination from Dundee.

15. Through his counsel, the Respondent attempted to obtain access from Dundee to the blank signed forms referred to in its termination letter so that he could properly comment on the forms in his response to the OSC. Dundee declined to provide access, citing client confidentiality concerns.

16. On January 4, 2008, in response to a letter from the OSC, the Respondent swore an affidavit in which he provided misleading information as follows:

> Para. 6 – I do not know what these documents [the blank and partially completed signed forms] are, and without access to them, I can't comment on them directly. If and when I am provided access to them I will be able to provide my comments.
>
> Para 7 – I can, however, advise that is [*sic*] not my practice to obtain, keep or use blank signed forms.

17. The Respondent states that at the time he made the impugned statement that it was "not [his] practice to obtain, keep or use blank signed forms" he did not believe the statement was misleading. However, the Respondent now acknowledges that the statement was misleading as he had in fact obtained, kept, and used blank and partially completed pre-signed forms.

18. The affidavit was provided to the OSC on January 4, 2008.

19. After receipt of the Respondent's affidavit, the OSC completed its review and approved the Respondent's registration with no terms or conditions, and he became registered with Keybase.

CONTRAVENTIONS

20. The Respondent admits:

i. from 2002 to at least April 2007, he obtained 43 blank or partially completed pre-signed trade forms for 30 clients, and maintained the said forms until November 1, 2007, contrary to MFDA Rule 2.1.1;

ii. from February 20, 2002 to August 22, 2005, he engaged in 22 instances of discretionary trading in the accounts of seven clients (all of which was known to and authorized by the clients), contrary to MFDA Rule 2.1.1; and

iii. on January 4, 2008, he swore an affidavit in which he provided misleading information to the OSC, contrary to MFDA Rule 2.1.1.

TERMS OF SETTLEMENT

21. The terms of settlement set out in the Settlement Agreement are as follows:

i. the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of one month commencing from the date of the Hearing Panel's final Order herein, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;

ii. the Respondent shall successfully complete the IFSE (IFIC) Mutual Fund Dealer Compliance course within six months of the date of the Hearing Panel's final Order herein, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;

iii. in the event that the Respondent does not successfully complete the Course within six months of the date of the Hearing Panel's final Order herein, the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member until such time as the Respondent successfully completes the IFSE course, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;

iv. the Respondent shall pay a fine in the amount of $20,000;

v. the Respondent shall pay costs in the amount of $5,000;

vi. the Respondent shall attend in person at the Settlement Hearing; and

vii. the Respondent shall in future comply with MFDA Rule 2.1.1.

SERIOUSNESS OF THE CONTRAVENTIONS

Pre-signed Forms

22. At the material time Dundee's policies and procedures prohibited Approved Persons (i.e., the Respondent) from asking clients to sign blank documents of any kind and also prohibited Approved Persons from maintaining pre-signed blank documents in client files.

23. The reasons for the prohibition against pre-signed forms are summarized in *Price (Re)*:[3]

> 123. At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client. While there is absolutely no suggestion that the Respondent engaged in any of these activities, the rationale for the prohibition on pre-signed forms becomes clear.
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> 124. Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's

[3] MFDA Case No. 200814, Reasons for Decision (Misconduct) of the MFDA Central Regional Council dated April 18, 2011.

> signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading in his or her account.

Discretionary Trading

24. As was stated in the case of *O'Brien (Re)*:[4]

> 19. …. mutual fund salespeople are not permitted to conduct discretionary trades and must always contact the client prior to making any transactions. Where an Approved Person fails to obtain client instructions prior to executing a trade, he engages in discretionary trading beyond the terms of his or her registration as a mutual funds salesperson.

25. Furthermore, even where there is no intent of using it for the purpose of taking advantage of a client, discretionary trading is prohibited because it may undermine the clients' rights and ability to make informed decisions about their financial affairs; it subverts the ability of a Member to properly supervise trading activity; and it destroys the integrity of the audit trail.

The Affidavit

26. In Staff's submission no regulator (in any industry) can police its registrants all the time and, as such, the trust between a regulator and its participants is especially important. The MFDA and its Members rightly expect and count on the truthfulness of industry participants. The Hearing Panel endorses this submission.

MITIGATING FACTORS AND CIRCUMSTANCES

27. The Respondent is 54 years old, has a Bachelor's degree in engineering and has worked in the financial services and insurance industries for most of his career.

28. There have been no client complaints and no misappropriation or trading that was not authorized by clients in this matter. There is no evidence of client harm and no known client

[4] 2008 LNCMFDA 17, Reasons for Decision of the MFDA Atlantic Regional Council dated November 25, 2008.

losses concerning the "authorized" discretionary trading engaged in by the Respondent, the last instance of which occurred over seven years ago.

29. There is no evidence that the Respondent received any financial benefit from engaging in the discretionary trading beyond that to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner (i.e. sales commissions generated in the normal course).

30. On August 27, 2008, Keybase conducted an audit of the Respondent's client files. No pre-signed forms were identified. On April 14, 2010, Keybase conducted another audit of the Respondent's client files. No pre-signed forms were identified.

31. Since becoming registered with Keybase in 2008, some 4½ years ago, the Respondent has maintained a clean record and states that he intends to continue in like manner.

32. The Respondent has demonstrated best efforts in becoming knowledgeable and compliant with MFDA Rules and policies as evidenced by the two successful Keybase audits of his files.

33. The Respondent has no prior disciplinary history with the MFDA and has been fully co-operative with Staff, thus eliminating the need for a full hearing on the merits.

34. The Respondent successfully completed the IFSE course in September, 2012.

35. The Respondent has paid the sum of $20,000.00 plus $5,000.00 to MFDA in escrow in payment of the penalty and costs pending the resolution of this hearing.

THE USE OF PENALTY GUIDELINES

36. The MFDA Penalty Guidelines are a resource when determining the appropriate penalties to be imposed. The penalty types and ranges stated in the Penalty Guidelines are not mandatory or binding;[5] however, they provide a basis upon which a hearing panel's discretion can be exercised consistently in like circumstances.

[5] MFDA Penalty Guidelines at p. 1.

37. In cases involving the misconduct of the type admitted to in the present case, the Penalty Guidelines recommend consideration of the following penalties and factors:

BREACH	PENALTY TYPE & RANGE	SPECIFIC FACTORS TO CONSIDER
Standard of Conduct (Guidelines, p. 27)	• Fine (AP): Minimum of $5,000. • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course). • Suspension. • Permanent prohibition in egregious cases.	• Nature of the circumstances and conduct. • Number of individuals affected. • Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute.
Discretionary Trading (Guidelines, p. 26)	• Fine: Minimum of $5,000. • Period of increased supervision. • Write or rewrite an appropriate industry course (e.g. Canadian Investment Funds Course). • Suspension. • Permanent prohibition in egregious cases.	• Number of trades. • Whether client provided verbal authority to engage in discretionary trading. • Underlying reason for engaging in trading. (e.g. for personal financial gain). • Number of clients affected. • Period of time over which the trading took place. • Suitability of trades. • Magnitude of client losses.

OTHER DECISIONS

38. In *Rounthwaite* the Respondent engaged in discretionary trading as part of his general practice and improperly facilitated an investment by a client in a charitable donation program. The Respondent was ordered to pay a fine of $20,000.00 and costs of $5,000.00. The following statements in the Reasons for Decision are applicable to the case before this Hearing Panel:

> 15. In determining whether a settlement is a reasonable one, the hearing panel is entitled to look at regulatory guidelines and other decisions. Guidelines are not binding upon a hearing panel and cannot derogate from its responsibility to decide what might be an appropriate penalty in a given case. However guidelines are useful in that they show what penalties Members of the industry consider to be generally appropriate. In this case the guidelines for discretionary trading suggest a minimum fine of $5,000.00. The fine agreed to in this case is substantially in excess of that.

39. In addition to *Rounthwaite*, Counsel for Staff referred the Panel to three decisions which involved discretionary trading. They were *Re O'Brien (supra)*, *Re Price*[6] and *Re Moro*[7]. The fine agreed to in the present case is well within the range of fines in those cases.

40. In considering these decisions the following statement in *Rounthwaite* bears repetition and must be kept in mind:

> 16. Decisions in other cases can often be of some assistance in helping to indicate what might be a reasonable range of penalties. It is always necessary to be cautious about relying too heavily on decisions in other cases because no two cases are ever the same.

41. By way of substantiating this caution it is noted that in *O'Brien* a permanent prohibition against conducting securities business was imposed. The facts in *O'Brien* were so egregious and his disciplinary history was so extensive that this Hearing Panel does not consider it to be comparable to the present case regarding the prohibition aspect of a penalty.

42. The *Price* and *Moro* decisions dealt only with the issue of discretionary trading forms through the use of blank pre-signed forms. In the present case there is the additional matter of the affidavit containing misleading information that the Respondent provided to the OSC.

43. With respect to the matter of the affidavit Counsel for Staff referred to *Law Society of Alberta v. Rigler.*[8] In support of his application for admission to the Law Society of Alberta as a Student-at-Law, Mr. Rigler filed a statutory declaration in which he deliberately made a statement regarding an earlier alcohol-related incident that was untrue and misleading. His application was approved. In a subsequent proceeding brought by the Law Society for termination of Mr. Rigler's registration as a Student-at-Law or a lengthy suspension, Mr. Rigler admitted that he lied in his statutory declaration.

44. The Committee hearing the application stated that "the fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high

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[6] [2011] MFDA No. 200814.
[7] [2007] MFDA No. 2007] No. 200714.
[8] [2008] L.S.D.D. No. 126 heard July 8, 2008.

degree of confidence in the legal profession."[9]

45. In coming to the conclusion that termination was not appropriate and imposing a three month period of suspension, the Committee hearing the matter set out the following considerations:[10]

- Mr Rigler admitted his guilt and displayed remorse for his conduct.
- There was no suggestion of any prior history of dishonesty or inappropriate conduct.
- Termination was not necessary for the purpose of deterrence as it was clear that the experience had already had a major impact on his life.
- Mr. Rigler had complied with undertakings he had given to the Practice Review Committee of the Law Society of Alberta which was satisfied with the steps Mr. Rigler had taken to address their concerns.
- The key consideration was whether it was necessary for the protection of the public and the reputation of the legal profession that Mr. Rigler be terminated. The Committee did not feel it was. In all the circumstances the Committee felt that the risk of Mr. Rigler re-offending was negligible and that the imposition of a suspension was sufficient to demonstrate the seriousness with which the Law Society viewed transgressions related to honesty and integrity.

THE DUTY OF A HEARING PANEL ON A SETTLEMENT HEARING

46. In the Reasons for Decision dated July 30, 2012 in *Rounthwaite (Re)*[11], the Hearing Panel stated:

> 11. It is well settled that our task is not to decide whether, in this case, we would arrive at the same decision as that reached by the parties in their settlement agreement. Rather, our duty is to determine whether the penalty is a reasonable one and whether it meets the objectives of the disciplinary process which are to maintain the integrity of the Investment Services Industry and to protect the public.

[9] Paragraph 32.
[10] Paragraphs 39, 40 and 41.
[11] 2012 LNCMFDA 60.

47. In the recent case of *Re Vorstadt*[12] an IIROC Hearing Panel stated:

> Before leaving this case we wish to stress the importance of respect for the settlement process. Settlement leads to fair, efficient and economical resolution of disciplinary matters. The settlement process should be encouraged and supported. In *Re Clarke,* [1999] I.D.A.C.D. No. 40, the Hearing Panel stated, at p. 3:
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> > The Panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement.

48. MFDA Rule of Procedure 15 governing Settlement Hearings authorizes a Hearing Panel to accept[13] or reject[14] Settlement Agreement. There is no additional authority to initiate changes to the Settlement Agreement.

FACTORS CONCERNING ACCEPTANCE OF A SETTLEMENT AGREEMENT

49. When determining whether a proposed settlement should be accepted, MFDA hearing panels have typically taken into account whether the proposed Settlement Agreement:[15]

i. is in the public interest and whether the penalty will protect investors;
ii. is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
iii. addresses the issues of both specific and general deterrence;
iv. will prevent the type of conduct described in the Settlement Agreement from occurring again in the future; and
v. will foster confidence in the integrity of the Canadian capital markets, the securities industry, the MFDA, and the regulatory process itself.

50. In addition, the Settlement Agreement should satisfy the need for specific and general deterrence.

DECISION

[12] [2012] IIROC at p.4.
[13] Rule 15.2 (3).
[14] Rule 15.2 (3).
[15] *IQON Financial Inc. (Re)*, 2007 LNCMFDA 29, Reasons for Decision of the MFDA Pacific Regional Council dated May 24, 2007 at paragraph 11.

51. The Settlement Agreement is reasonable having regard to the above considerations regarding the Respondent's misconduct, the seriousness of the contraventions, the MFDA Penalty Guidelines, other decisions, the mitigating factors and circumstances, and the factors concerning acceptance of a Settlement Agreement.

DATED this 21st day of December, 2012.

"Stanley Kurisko"
The Hon. Stanley R. Kurisko, Q.C.,
Chair

"Glenda Towle"
Glenda Towle,
Industry Representative

"Guenther Kleberg"
Guenther Kleberg,
Industry Representative

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