



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: Walter Guiseppe Montana

Heard: November 26, 2019 in Calgary, Alberta

Decision: November 26, 2019

Reasons for Decision: December 11, 2019

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC
Kathleen Jost
Richard Sydenham

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Ashley Thomassen)	Counsel for the Respondent, by teleconference
)	
)	
Walter Guiseppe Montana)	Respondent, in person
)	
)	

Background

1. On September 3, 2019 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 Walter Guisepe Montana, (the "Respondent").
2. The Respondent entered into a settlement agreement with Staff of the MFDA, dated August 28, 2019 ("Settlement Agreement") in which the Respondent agreed to a proposed settlement of matters.
3. On November 26, 2019, after hearing submissions from Enforcement Counsel and Counsel for the Respondent, this Hearing Panel approved the Settlement Agreement, and signed an Order reflecting that approval. These are our written reasons for doing so.

Agreed Facts

Registration History

4. In March 1990, the Respondent was registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Mutual Investco Inc., which subsequently underwent a name change to Clarica Investco Inc. In June 2007, Clarica Investco Inc. underwent a name change to Sun Life Financial Investment Services (Canada) Inc.
5. The Respondent was also registered in British Columbia from various times until April 2008.
6. At all material times, the Respondent conducted business in the Lethbridge, Alberta area.

Re-Used Account Form

7. In or around January 2013, the Respondent, or his assistant for whom he was responsible, altered information on a "direction for payment from a RESP" form that had been previously signed by a client and used in a previous transaction in order to process a new transaction in the client's account.

Altered Account Forms

8. At all material times, the Member's policies and procedures prohibited its Approved Persons from obtaining, holding, or using altered account forms.
9. Between March 2010 and January 2018, the Respondent, or his assistants for whom he was responsible, altered 14 account forms in respect of 9 clients by altering information on the account forms without having the clients initial the alterations.
10. The altered account forms consisted of:
 - a) 2 direction for payment from a RESP forms;
 - b) 1 Know Your Client ("KYC") form;
 - c) 1 limited trade authorization ("LTA") form;
 - d) 1 new account application form;
 - e) 2 order tickets;
 - f) 3 pre-authorized chequing forms;
 - g) 3 switch forms; and
 - h) 1 transfer authorization form.
11. The alterations to the account forms included alterations to dates, account numbers, fund names, and fund codes.
12. In all instances, the Respondent, or his assistants, submitted the altered forms to the Member for processing.

Pre Signed Account Forms

13. At all material times, the Member's policies and procedures prohibited its Approved Persons from obtaining, holding, or using pre-signed account forms.
14. Between March 2010 and January 2018, he, or his assistants for whom he was responsible, obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 19 clients.
15. The pre-signed account forms consisted of:

- a) 4 banking information change forms;
- b) 1 Canada Education Savings Grant application form;
- c) 2 CRA direct transfer forms;
- d) 5 KYC forms;
- e) 6 LTA forms;
- f) 1 transfer form;
- g) 1 new account application form;
- h) 3 order tickets;
- i) 3 pre-authorized chequing forms;
- j) 1 RESP application form; and
- k) 2 switch forms.

The Member's Investigation

16. In January 2018, the Member identified pre-signed account forms belonging to a client, whose account was serviced by the Respondent. The Member subsequently commenced an investigation and audit of all of the client files maintained by the Respondent and identified the remaining account forms that are the subject of this Settlement Agreement.

17. On or about March 5, 2018, the Member placed the Respondent on close supervision for a period of 6 months.

18. On or about March 31, 2017, the Member sent letters to all of the clients whose accounts were serviced by the Respondent, which included recent transaction statements, in order to determine whether the transactions in the clients' accounts were authorized. The letters also included a summary of the clients' KYC information and the Member requested that the clients review the information to ensure the KYC information was accurate. No clients reported any concerns.

19. On or about July 12, 2018, the Member issued a warning letter to the Respondent for possessing and using re-used, altered and pre-signed account forms, and placed the Respondent on close supervision for an additional two months.

Additional Factors

20. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
21. There is no evidence of any client loss or that the transactions were unauthorized.
22. The Respondent has not been the subject of prior MFDA disciplinary proceedings.
23. The Respondent states that he has since corrected his practices going forward and no longer obtains re-used, pre-signed or altered account forms.
24. The Respondent states that in some cases, the account forms as described above were obtained and used by his assistants. The Respondent acknowledges that he is ultimately responsible for their conduct that is the subject of this Settlement Agreement.
25. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

Analysis

26. The Respondent admits that he or his assistants for whom he was responsible,
 - a) altered information on a “direction for payment from a RESP” form that had been previously signed by a client and used in a previous transaction in order to process a new transaction in the client’s account,
 - b) altered 14 account forms in respect of 9 clients by altering information on the account forms without having the clients initial the alterations, and,
 - c) obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 19 clients.
27. The forms were processed after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015. In the Bulletin, Staff advised Members and Approved Persons that Staff will be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015, (the “MFDA Bulletin”).

28. The conduct here was committed after the issuance of the MFDA Bulletin.

29. The Settlement Agreement provides that the Respondent has agreed to pay a fine of \$14,500 and costs of \$2,500.

30. A hearing panel should not interfere lightly in a negotiated settlement and should not reject a settlement agreement unless it views the proposed penalty as clearly falling outside the range of reasonableness. In our view, this Settlement Agreement advances the public interest and is reasonable and proportionate, having regard to all of the circumstances.

31. We have arrived at this conclusion having considered the following factors:

Nature of the Misconduct: Re-Used, Altered, and Pre-Signed Account Forms

32. The Respondent's misconduct or that of his assistants for whom he was responsible was serious.

Post-Bulletin Misconduct

33. 17 account forms were obtained after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015 which is an aggravating factor.

Respondent is Responsible for Assistants

34. While Approved Persons are permitted to delegate certain administrative tasks to assistants, they remain responsible for the supervision of the licensed and unlicensed assistants and actions taken following such delegation.

Respondent's Experience in the Securities Industry

35. The Respondent has been registered in the mutual fund industry since March 1990.

Respondent's Recognition of the Seriousness of the Misconduct

36. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing.

Client Harm and Benefits Received by the Respondent

37. There is no evidence to suggest that the Respondent received a financial or other benefit through his conduct, and there were no client complaints.

Deterrence

38. A fine of \$14,500 is necessary and sufficient to achieve the goals of specific and general deterrence, having regard to the factors described above. It demonstrates that the Respondent's misconduct in all of the circumstances is serious and has significant consequences. The penalty will also deter others in the capital markets from engaging in similar activity.

Conclusion

39. We have considered the existing precedents on penalty, as well as the MFDA's non-binding Sanctions Guidelines.

40. In summary, we find that the Settlement Agreement is in the public interest. As said, it is reasonable and proportionate, it addresses specific and general deterrence and will foster public confidence in the integrity of the Canadian capital markets, and the industry.

Order

41. For these reasons, the Settlement Agreement was approved.

42. We thank both Counsel and the Respondent for their cooperation during the hearing.

DATED this 11th day of December, 2019.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“Kathleen Jost”

Kathleen Jost
Industry Representative

“Richard Sydenham”

Richard Sydenham
Industry Representative

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