



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: Carlos David Morante

Heard: August 15, 2019 in Calgary, Alberta

Decision: August 15, 2019

Reasons for Decision: September 18, 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:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Carlos Morante)	Respondent, in person
)	
)	

Background

1. This Settlement Hearing under Section 24.4 of By-Law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA") was held on August 15, 2019. The Respondent appeared in person. The full Settlement Agreement dated July 31, 2019 entered into between the Respondent Carlos David Morante (the "Respondent") and MFDA signed by its Staff is attached as Appendix "A" to these Reasons for Decision and its relevant provisions will not be repeated in detail here.
2. The Respondent was registered as a mutual fund dealing representative since May 2013.
3. This Hearing Panel accepted the proposed Settlement Agreement at the conclusion of the August 15, 2019 hearing, with reasons to follow, which are set out below.

Contraventions

4. The Respondent has admitted that:
 - a) between December 2016 and January 2017, the Respondent misappropriated \$1,300 by directing the proceeds of redemptions from a joint Registered Education Savings Plan (RESP) account that he and his former spouse had opened for the benefit of their children to the Respondent's personal bank account without the knowledge or authorization of his former spouse, thereby failing to deal fairly, honestly and in good faith with the client, and engaging in business conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1; and
 - b) In December 2016, the Respondent signed client YM's signatures and initials on two trade forms without the knowledge or authorization of client YM, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.10 and 1.1.2.

Terms of Settlement

5. In paragraph 5 of the Settlement Agreement, the Respondent agreed to the following penalties and terms of settlement:
 - a) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon

- acceptance of the Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
- b) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a MFDA Member for a period of 2 years pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
 - c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - d) the Respondent will attend the Settlement Hearing in person.

Acceptance of the Settlement Agreement

6. In determining if it was appropriate to accept the terms of the Settlement Agreement, this Hearing Panel took into consideration the following factors:

7. From May 2013 to August 2013, and from January 2015 to April 2017, the Respondent was registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with WFG Securities Inc. (the “Member”), a Member of the MFDA.

8. On April 12, 2017, the Respondent voluntarily resigned and is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent carried on business in the Calgary, Alberta area.

Misappropriation and Signature Falsification

10. At all material times, the Respondent and his former spouse, client YM, maintained a joint Registered Education Savings Plan (“RESP”) account with the Member (the “Joint RESP Account”). The two daughters of the Respondent and client YM were the beneficiaries of that account.

11. The Respondent and client YM separated several months before the transactions described below were processed in the Joint RESP Account.

12. At all material times, the policies and procedures of the Member prohibited Approved Persons from signing a client’s name on account forms regardless of the circumstances.

13. On December 23, 2016, the Respondent signed client YM’s signatures and initials on two trade forms that had to be submitted in order to redeem and withdraw a total of \$1,300 from the

Joint RESP Account and submitted the forms for processing. The Respondent signed client YM's signature on the trade forms without informing her that he intended to redeem investments held in the Joint RESP Account or that he intended to sign her name on the trade documentation required to process the redemptions.

14. On January 26, 2017, the redemptions were completed and the proceeds were deposited into the Respondent's bank account.

15. The Respondent processed the redemptions from the Joint RESP Account in order to pay personal expenses for his own benefit. None of the money was applied to its intended use to pay educational expenses of the Respondent and his daughters.

16. On February 22, 2017, client YM complained to the Member that investments had been redeemed and money had been withdrawn from the Joint RESP Account without her knowledge or authorization. She informed the Member that she had not signed the trade documentation that had been submitted on December 23, 2016 in order to facilitate the processing of the redemptions in the Joint RESP Account and that she had not authorized the redemptions that had been processed in the Joint RESP Account on January 26, 2017.

17. On April 18, 2017, after the Respondent was confronted by the Member about client YM's complaint, the Respondent reversed the redemptions and restored the \$1,300 that he had redeemed and withdrawn from the Joint RESP Account without client YM's knowledge or authorization.

WFG's Response

18. On March 2, 2017, WFG issued a Warning Letter to the Respondent and placed him under close supervision for the misconduct described above.

19. On March 13, 2017, WFG conducted a review of all of the client files serviced by the Respondent but did not identify any additional concern.

Additional Factors

20. The Respondent states that he is impecunious and unable to contribute any additional amounts towards a fine in this matter. The Respondent acknowledges that absent his limited ability

to pay, his conduct would have merited a penalty that included a greater fine than is the subject of this Settlement Agreement.

21. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

22. The Respondent has cooperated in full with both WFG and the MFDA. 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.

Nature of the Misconduct: Misappropriation

23. The Respondent admits that he misappropriated \$1,300 by directing the proceeds of redemptions from a joint account that he and his former spouse had opened for the benefit of their children to the Respondent's personal bank account without the knowledge or authorization of his former spouse.

24. MFDA Rule 2.1.1 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.

25. As stated in *Douglas (Re)*, MFDA File No. 201824, Hearing Panel of the Central Regional Council, Decision and Reasons dated October 9, 2018, at para. 24, misappropriation of client funds by an Approved Person is inconsistent with the standard of conduct set out in Rule 2.1.1. It encompasses a serious breach of trust, causes real harm to the clients affected, and undermines the reputation and integrity of the securities industry.

26. On the basis of the foregoing, the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1. The present case, however, does not represent the most egregious breach of Rule 2.1.1 because of the mitigating factors described below.

The Respondent's Experience in the Securities Industry

27. The Respondent was registered as a mutual fund dealing representative since May 2013.

He is an experienced dealing representative who ought to have known and respected the MFDA's and the Member's compliance requirements.

The Respondent's Past Conduct

28. The Respondent has not previously been disciplined by the MFDA.

The Respondent's Recognition of the Seriousness of his Misconduct

29. 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.

Client Harm and Benefits Received by the Respondent

30. The Respondent reimbursed the \$1,300 that he had redeemed and withdrawn from the Joint RESP Account. Hence, the client did not suffer any loss.

31. Enforcement Counsel cited in support of his submission the penalties imposed in a number of recent cases, including:

- a) *Alathamna*, MFDA File No. 201831, Hearing Panel of the Central Regional Council, Decision dated Jan 31, 2019
- b) *Kwok (Re)*, MFDA File No. 201730, Hearing Panel of the Central Regional Council, Decision dated Nov 30, 2017
- c) *Henry*, MFDA File No. 200917, Hearing Panel of the Central Regional Council, Decision dated Mar 29, 2010

32. In *Alathamna*, (supra), the Respondent falsified 2 client signatures. He demonstrated an inability to pay a monetary fine and accordingly, the hearing panel approved a penalty of 3 months prohibition and costs of \$1,000.

33. In *Kwok Re*, (supra) the Respondent misappropriated \$13,750 of client monies by falsifying client account forms and a letter of direction in order to direct the proceeds of a redemption from the client's mutual fund account to the Respondent's bank account. The Respondent repaid the misappropriated amounts. The hearing panel approved a permanent prohibition and costs of \$2,500.

34. In *Henry*, (supra) the Respondent misappropriated \$6,440 from one client, fabricated an investment Statement for the client and failed to report a complaint. The hearing panel approved a 2 years prohibition, fine of \$10,000 and costs of \$2,500.

35. In *Kwok (Re)*, (supra) the hearing panel initially was concerned that the agreed penalties, without the addition of a fine, might not provide an adequate deterrent to the industry and that in addition to a permanent prohibition, one would normally expect that a fine was also necessary. The Respondent repaid everything he took, did not turn his back on the jurisdiction of the MFDA and its ability to enforce its judgements, accepted to pay \$2,500 as costs, had co-operated with the MFDA in a speedy resolution of this matter, the amounts involved were relatively small and the incident involved one occasion with one client.

36. This Hearing Panel found those reasons to be helpful in its deliberations.

Appropriateness of the Proposed Penalty

37. Based on a consideration of all the above listed factors including the facts that the Respondent repaid the funds in question but is currently impecunious, this Hearing Panel concludes that the penalties, including the temporary prohibition and costs award proposed in the Settlement Agreement, are in this case reasonable and proportionate and will deter the Respondent and other Approved Persons from engaging in similar misconduct.

38. Further, this Hearing Panel concludes that acceptance of this Settlement Agreement will advance the public interest and the objective of the MFDA to enhance investor protection and ensure high standards of conduct in the mutual fund industry and accordingly approves its terms.

39. This Hearing Panel thanks Enforcement Counsel for his helpful presentation and the Respondent for his cooperation during the hearing.

DATED this 18th day of September, 2019.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“Kathleen Jost”

Kathleen Jost
Industry Representative

“Richard Sydenham”

Richard Sydenham
Industry Representative

DM 698810



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

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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Carlos David Morante

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Carlos David Morante (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 December 2016 and January 2017, the Respondent misappropriated \$1,300 by directing the proceeds of redemptions from a joint account that he and his former spouse had opened for the benefit of their children to the Respondent's personal bank account without the knowledge or authorization of his former spouse, thereby failing to deal fairly, honestly and in good faith with the client, and engaging in business conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1; and
 - b) In December 2016, the Respondent signed client YM's signatures and initials on two trade forms without the knowledge or authorization of client YM, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.10 and 1.1.2.
5. Staff and the Respondent agree and consent to the following terms of settlement:
- a) The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
 - b) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a MFDA Member for a period of 2 years pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
 - c) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - d) The Respondent will attend the Settlement Hearing in person.
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. From May 2013 to August 2013, and from January 2015 to April 2017, the Respondent was registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with WFG Securities Inc. (the "Member"), a Member of the MFDA.
8. On April 12, 2017, the Respondent voluntarily resigned and is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent carried on business in the Calgary, Alberta area.

Misappropriation and Signature Falsification

10. At all material times, the Respondent and his former spouse, client YM, maintained a joint Registered Education Savings Plan (“RESP”) account with the Member (the “Joint RESP Account”). The two daughters of the Respondent and client YM were the beneficiaries of that account.

11. The Respondent and client YM separated several months before the transactions described below were processed in the Joint RESP Account.

12. At all material times, the policies and procedures of the Member prohibited Approved Persons from signing a client’s name on account forms regardless of the circumstances.

13. On December 23, 2016, the Respondent signed client YM’s signatures and initials on two trade forms that had to be submitted in order to redeem and withdraw a total of \$1,300 from the Joint RESP Account and submitted the forms for processing. The Respondent signed client YM’s signature on the trade forms without informing her that he intended to redeem investments held in the Joint RESP Account or that he intended to sign her name on the trade documentation required to process the redemptions.

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WFG's Response

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19. On March 13, 2017, WFG conducted a review of all of the client files serviced by the Respondent but did not identify any additional concern.

Additional Factors

20. The Respondent states that he is impecunious and unable to contribute any additional amounts towards a fine in this matter. The Respondent acknowledges that absent his limited ability to pay, it would have been appropriate for him to be subject to a penalty that included a greater fine due to the conduct that is the subject of this Settlement Agreement.

21. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

22. The Respondent has cooperated in full with both WFG and the MFDA. 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

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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 31st day of July, 2019.

“Carlos David Morante”

Carlos David Morante

“SJM”

Witness – Signature

SJM

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. 201928



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: Carlos David Morante

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 Carlos David Morante (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 December 2016 and January 2017, the Respondent misappropriated \$1,300 by directing the proceeds of redemptions from a joint account that he and his former spouse had opened for the benefit of their children to the Respondent’s personal bank account without the knowledge or authorization of his former spouse, thereby failing to deal fairly, honestly and in good faith with the client, and

engaging in business conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1; and

- b) in December 2016, the Respondent signed client YM's signatures and initials on two trade forms without the knowledge or authorization of client YM, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.10 and 1.1.2.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

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;
3. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a MFDA Member for a period of 2 years pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
4. The Respondent shall in the future comply with MFDA Rules 2.1.1; and
5. 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]