



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: Gerard Augustine Nash

Heard: December 4, 2018 in St. John’s, Newfoundland

Decision: December 4, 2018

Reasons for Decision: February 7, 2019

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, QC
Ann C. Etter
Darrell Bing

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Ruth Trask)	Counsel for the Respondent
)	
Gerard Augustine Nash)	Respondent
)	

I. INTRODUCTION:

1. On October 30, 2018, a Settlement Agreement was entered into between Staff of the MFDA (“Staff”) and Gerard Augustine Nash (“Respondent”).
2. By Notice of Settlement Hearing, dated November 1, 2018, a Hearing was convened on December 4, 2018, in St. John’s, Newfoundland, to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, this Settlement Agreement should be accepted by the Hearing Panel.
3. On December 4, 2018, after reviewing the Settlement Agreement and considering both the written and oral submissions of the parties, the Hearing Panel accepted the Settlement Agreement and executed an Order implementing the terms of the settlement. These are our Reasons for Decision.

II. AGREED FACTS:

4. In the Settlement Agreement, Staff and the Respondent agreed upon the following facts:

“AGREED FACTS

Registration History

7. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA¹, in Newfoundland and Labrador since January 2000, and in Ontario since October 2016.
8. From October 2009 to November 2016, the Respondent was also registered in Nova Scotia as a mutual fund salesperson with Quadrus.
9. At all material times, the Respondent conducted business in the St. John’s, Newfoundland and Labrador area.

Pre-Signed Account Forms

10. At all material times, Quadrus’ policies and procedures prohibited its Approved Persons from using pre-signed account forms.
11. Between February 2011 and February 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 29 pre-signed account forms in respect of 23 clients.
12. The pre-signed account forms consisted of:

¹ Quadrus became a Member of the MFDA in March 2002.

- a) 8 transfer authorization forms;
- b) 6 subsequent investment forms;
- c) 5 redemption forms;
- d) 4 Registered Education Savings Plan withdrawal forms;
- e) 2 switch forms;
- f) 1 loan application form;
- g) 1 release of collateral form;
- h) 1 Canada Revenue Agency direct transfer form; and
- i) 1 investment application form.

Altered Account Form

13. On or about September 23, 2013, the Respondent altered one transfer authorization form in respect of one client by using whiteout and pen to alter information on the form without having the client initial the alterations.

Quadrus' Investigation

14. In May 2017, Quadrus conducted a review of all of the Respondent's client files after a client whose account was serviced by the Respondent attended at the Respondent's branch with a pre-signed form and spoke with a Quadrus representative. During the review, Quadrus identified the pre-signed and altered account forms that are the subject of this Settlement Agreement.

15. On May 30, 2017, Quadrus issued a disciplinary letter to the Respondent with respect to the conduct described above and placed the Respondent under close supervision for a period of one year.

16. In June and July 2017, Quadrus sent letters to 199 clients serviced by the Respondent to determine whether the Respondent had engaged in any unauthorized trading. No clients reported concerns.

Additional Factors

17. 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.

18. There is no evidence of client loss or lack of authorization.

19. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

20. 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.”

III. ADMISSION OF VIOLATIONS OF MFDA BY-LAWS, RULES AND POLICIES

5. In the Settlement Agreement, the Respondent admitted to the following violations of the MFDA's By-laws, Rules and Policies:

- a) between February 2011 and February 2017, the Respondent obtained, possessed, and in some instances used to process transactions, 29 pre-signed account forms in respect of 23 clients, contrary to MFDA Rule 2.1.1; and
- b) on or about September 23, 2013, the Respondent altered one account form in respect of one client by altering information on the account form without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

IV. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine in the amount of \$13,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 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 in person on the date set for the Settlement Hearing.

7. Staff advised the Hearing Panel that the Respondent had paid to the MFDA in escrow, pending the acceptance of the Settlement Agreement, \$13,000 for the fine and \$2,500 for the costs.

V. CONSIDERATIONS FOR ACCEPTING THE SETTLEMENT AGREEMENT

8. Prior to accepting a Settlement Agreement, the Hearing Panel must be satisfied that:

- a) the facts admitted to by the Respondent constitute misconduct in contravention of the MFDA By-laws, Rules and Policies;

- b) the penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness bearing in mind the nature and extent of all relevant circumstances; and
- c) the agreed penalty should serve as a deterrent to both the Respondent and to the investment industry.

VI. NATURE OF MISCONDUCT

9. The Respondent admitted that he had breached MFDA Rule 2.1.1. This 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.

10. In our view, it is clear that the use of pre-signed forms contravenes Rule 2.1.1. Likewise, the Rule is also contravened by falsifying or altering forms.

11. The MFDA has previously warned Approved Persons against altering forms or using pre-signed forms:

- a) MFDA Notice #MSN-0066, dated October 31, 2007 (updated March 4, 2013 and January 26, 2017).
- b) MFDA Bulletin #0661-E, dated October 2, 2015.

12. MFDA Hearing Panels have held that obtaining or using pre-signed forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

Wong (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201848, Panel Decision dated July 23, 2018.

Oh (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201853, Panel Decision dated October 26, 2018.

Lo (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201776, Panel Decision dated February 7, 2018.

13. These same cases also clearly indicate that an Approved Person engages in conduct contrary to Rule 2.1.1 when he or she alters information on an account form without having the client initial the form to show that the change was authorized.

14. In the present case, the Respondent admits that he:

- a) obtained, possessed, and in some instances used to process transactions, 29 pre-signed forms in respect of 23 clients;
- b) altered one account form, in respect of one client, altering information on the account form without having the client initial the alterations.

VII. CONSIDERATIONS IN THE PRESENT CASE

15. As indicated, the use of pre-signed forms and altered forms, as occurred here, are serious breaches of MFDA Rule 2.1.1.

16. The Hearing Panel was made aware of the following mitigating factors:

- a) there is no evidence of client loss or lack of authorization;
- b) there is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner;
- c) the Respondent had not previously been the subject of MFDA discipline proceedings; and
- d) by entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct. He has also saved the MFDA the time, resources and expenses associated with a full disciplinary proceeding.

17. In our view, the penalties, which were proposed in the Settlement Agreement, will act as a general deterrent and reinforce the message that pre-signed and altered forms are not tolerated either by the MFDA or the mutual fund industry.

18. We also believe that the penalties will act as a specific deterrent regarding the Respondent engaging in misconduct in the future.

19. Staff presented the Hearing Panel with a number of previous MFDA Decisions to demonstrate that the proposed resolution was within the reasonable range of appropriateness.

VIII. DECISION

20. Having carefully reviewed the Settlement Agreement and considered the written and oral submissions of Counsel for the parties, we unanimously concluded that the Settlement Agreement was in the public interest. Consequently, we signed an Order implementing it.

DATED this 7th day of February, 2019.

“Thomas J. Lockwood”

Thomas J. Lockwood, QC
Chair

“Ann C. Etter”

Ann C. Etter
Industry Representative

“Darrell Bing”

Darrell Bing
Industry Representative

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