



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: Michael Charles Nisbet

Heard: April 27, 2017 in Toronto, Ontario

Decision: April 27, 2017

Reasons for Decision: June 7, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Robert C. White	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
David Di Paolo)	Counsel for the Respondent
Maureen Doherty)	
)	
Michael Charles Nisbet)	Respondent, In Person

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated January 13, 2017 (the “Settlement Agreement”) between the staff of the MFDA and Michael Charles Nisbet (the “Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in section III of the Settlement Agreement.

Contraventions

2. The Respondent admitted that:
- a) between June 2011 and February 2015, and June 2015, the Respondent obtained, possessed, and used to process transactions, 3 pre-signed account forms, contrary to MFDA Rule 2.1.1; and
 - b) between June 2011 and March 13, 2014, the Respondent did not review the information on 3 account forms with a client in respect of 3 transactions requested by the client, and then signed the account forms in his capacity as Approved Person, falsely attesting that he had reviewed the information on the account forms with the client, contrary to MFDA Rule 2.1.1.

Agreed penalty

3. The agreed penalties were: i) a fine of \$6,500; ii) a 6 month prohibition from acting in the capacity of a branch manager; and iii) a costs award of \$2,500.

Considerations

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair

and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on him of the agreed penalty.

Nature of the Misconduct

5. The possession and/or use of pre-signed account forms is a serious breach of MFDA Rule 2.1.1.

6. Hearing Panels have held that Approved Persons who mislead the Member or fail to accurately respond to a Member's annual compliance questionnaire, contravene the standard of conduct set out in MFDA Rule 2.1.1. (*Richardson (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201636, Reasons for Decision dated October, 2, 2015; *Zukowski (Re)*, [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201552, Reasons for Decision dated May 16, 2016.).

7. In the present case, the Respondent's conduct is analogous to the conduct referred to in the preceding paragraph.

8. Failing to review the information in account forms with a client when required and then falsely attesting that the review had taken place are serious breaches of MFDA Rule 2.1.1.

Other considerations in determining acceptability of agreed penalty

9. The Respondent's Member placed the Respondent under close supervision and issued him a warning letter in respect of the pre-signed account forms. The Respondent remains under close supervision.

10. There was no evidence of client loss.
11. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct above and beyond the commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
12. The Respondent has not previously been subject to MFDA disciplinary proceedings.
13. The agreed penalty is significant and helps the MFDA to send a message to the respondent and others in the capital markets about the seriousness of the misconduct.
14. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.
15. The MFDA penalty guidelines recommend one or more of the following sanctions where a person fails to adhere to the standard of conduct set out in the rules: a minimum fine of \$5,000; writing or re-writing an appropriate industry course; suspension; a permanent prohibition in egregious cases.
16. The guidelines are not mandatory but are intended to assist Hearing Panels, MFDA staff and respondents in considering the appropriate penalties in MFDA disciplinary proceedings.
17. The agreed penalty includes a 6 month suspension in acting as a branch manager, which is appropriate since the Respondent was designated as a branch manager during the period of the conduct in question.
18. The agreed penalty is consistent with the MFDA penalty guidelines, and is within the reasonable range of appropriateness with regard to other decisions, submitted to us by staff, made by MFDA Hearing Panels in similar circumstances.

Conclusion

19. We concluded that the agreed penalty was within an acceptable range based on precedents, would serve as a specific and general deterrent, and was fair and reasonable. We considered the costs award to be reasonable in the circumstances. We concluded, therefore, that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 7th day of June, 2017.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Robert C. White”

Robert C. White
Industry Representative

“Joseph Yassi”

Joseph Yassi
Industry Representative

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Schedule "1"

Settlement Agreement

File No. 201705



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: Michael Charles Nisbet

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Michael Charles Nisbet (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 MFDA:

- a) between June 2011 and February 2015, the Respondent obtained, possessed, and used to process transactions, 3 pre-signed account forms, contrary to MFDA Rule 2.1.1; and
- b) between June 2011 and March 13, 2014, the Respondent did not review the information on 3 account forms with a client in respect of 3 transactions requested by the client, and then signed the account forms in his capacity as Approved Person, falsely attesting that he had reviewed the information on the account forms with the client, contrary to 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 \$6,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall be prohibited from acting in the capacity of a branch manager for a period of 6 months pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- e) the Respondent will attend in person, on the date set for 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. Since 2008, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Sun Life Financial Investment Services (Canada) Inc., a Member of the MFDA. Since 2014, the Respondent has also been registered in British Columbia.

8. Between August 2013 and May 2015, the Member designated the Respondent as branch manager in his branch.

9. At all material times, the Respondent conducted business in the Sarnia, Ontario area.

Pre-Signed Account Forms

10. Between June 2011 and February 2015, the Respondent obtained, possessed, and used to process transactions, 3 pre-signed account forms.

11. The pre-signed account forms consisted of transfer authorization forms and an appointment of beneficiary form.

Failing to Review Form with a Client

12. Between June 2011 and March 13, 2014, the Respondent did not review the information on 3 account forms with a client in respect of 3 transactions requested by the client, and then signed the account forms in his capacity as Approved Person, falsely attesting that he had reviewed the information on the account forms with the client.

13. On each occasion, the assistant of another Approved Person provided the Respondent with a Pre-Authorized Contribution Agreement (“PAC”) form that had already been signed by the client and requested that the Respondent sign the PAC form as the other Approved Person was unavailable to sign the PAC form.

14. In each instance, the Respondent signed his name on the PAC form, without having reviewed the form with the client, directly beneath an attestation on the form that stated that the Respondent had reviewed the information on the form with the client.

Sun Life’s Investigation

15. In or around February 2015, Sun Life’s Dealer Operations Group identified pre-signed account forms during its routine review of documents submitted for processing from the Respondent’s branch. During Sun Life’s subsequent investigation of the branch, which included the review of all client files, Sun Life identified the misconduct set out in this Settlement Agreement.

16. As part of its investigation, Sun Life sent letters to all of the clients serviced by the Respondent in order to determine if the Respondent engaged in any unauthorized trading. No clients raised concerns.

17. Sun Life placed the Respondent under close supervision and issued him a warning letter in respect of the pre-signed account forms. The Respondent remains under close supervision.

Additional Factors

18. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond the commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

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

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

21. 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.

ADDITIONAL TERMS OF SETTLEMENT

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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 13th day of January, 2017.

“Michael Charles Nisbet”

Michael Charles Nisbet

“CV”

Witness – Signature

CV

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. 201705



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**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Michael Charles Nisbet

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 [Respondent] (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 June 2011 and February 2015, the Respondent obtained, possessed, and used to process transactions, 3 pre-signed account forms, contrary to MFDA Rule 2.1.1; and

- b) between June 2011 and March 13, 2014, the Respondent did not review the information on 3 account forms with a client in respect of 3 transactions requested by the client, and then signed the account forms in his capacity as Approved Person, falsely attesting that he had reviewed the information on the account forms with the client, contrary to 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 \$6,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
2. The Respondent shall be prohibited from acting in the capacity of a branch manager for a period of 6 months pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
3. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
4. The Respondent shall in the future comply with MFDA Rule 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]