



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: Kathryn Dee Nokony

Heard: October 6, 2016, in Vancouver, British Columbia
Reasons for Decision: November 21, 2016

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Robert G. Ward, Q.C.
Cecilia Wong
Bob Sokugawa

Chair
Industry Representative
Industry Representative

Appearances:

Christopher Corsetti

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Counsel for the Mutual Fund Dealers
Association of Canada

Kathryn Dee Nokony

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In Person

BACKGROUND

1. This Hearing was duly constituted by the Mutual Fund Dealers Association of Canada (the “MFDA”) to consider a Settlement Agreement dated August 22, 2016 (the “Settlement Agreement”) between Staff of the MFDA (“Staff”) and Kathryn Dee Nokony (the “Respondent”). The proposed Settlement Agreement concerns allegations that the Respondent:

- a. between May 2014 and March 2015, obtained, possessed, and used to process trades, 5 pre-signed account forms in respect of five (5) clients, contrary to MFDA Rule 2.1.1; and
- b. between May 2014 and March 2015, falsified, and used to process trades, four (4) account forms in respect of two (2) clients, by altering the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- c. on November 4, 2014, misled the Member on its annual registration questionnaire when she indicated to the Member that she did not control or possess any pre-signed account forms, contrary to MFDA Rule 2.1.1.

2. We were constituted as a Hearing Panel of the Pacific Region of the MFDA to consider the Settlement Agreement.

3. We then considered both the submissions of Staff and the Settlement Agreement in our determination of whether or not the Settlement Agreement should be accepted. The Respondent declined to add further submissions.

4. By unanimous Order, the Settlement Agreement was accepted.

FACTS

5. The MFDA and the Respondent agreed with certain facts for the purpose of the Settlement Agreement. Contained in paragraphs 6 to 19 inclusive hereof are the facts, as agreed to between the MFDA and the Respondent, taken verbatim.

Registration

6. The Respondent has been registered in the securities industry since 1997.

7. Since January 13, 2000, the Respondent has been registered with Worldsource Financial Management Inc. (“Worldsource”), a Member of the MFDA, as a mutual fund salesperson (now known as a dealing representative) in British Columbia, and in Alberta since February 28, 2012. The Respondent was registered with Worldsource in Saskatchewan from September 28, 2009 to December 20, 2012.

8. At all material times, the Respondent carried on business in the Vancouver, British Columbia area.

Pre-Signed Form

9. At all material times, Worldsource’ policies and procedures prohibited its Approved Persons from conducting business using blank or partially complete pre-signed account forms.

10. Between May 2014 and March 2015, the Respondent obtained, possessed and, used 5 pre-signed account forms in respect of 5 clients. The Respondent obtained forms with the client signature and photocopied them in order to process transactions at a later date. The Respondent states that she obtained the pre-signed forms in order to avoid inconvenience to the clients.

Falsified Forms

11. Between May 2014 and March 2015, in addition to the above forms described at paragraph 10, the Respondent obtained and used to process trades, 4 more pre-signed account forms in respect of 2 clients, which the Respondent altered by changing the date on the account forms previously signed by the clients, without having the clients initial the alterations.

12. The Respondent used these forms to process redemptions in the clients' accounts consistent with the clients' instructions.

Misleading Worldsource

13. On November 4, 2014, the Respondent misled the Member on its annual registration questionnaire when she indicated to the Member that she did not control or possess any pre-signed account forms, contrary to MFDA 2.1.1.

Worldsource's Investigation

14. On or about April 2015, Worldsource identified 1 pre-signed account form used to process a redemption in the Respondent's client files during the course of a routine audit of the Respondent's branch office.

15. On April 27, 2015, Worldsource issued a Warning Letter to the Respondent for the misconduct. After issuing the Warning Letter, Worldsource reviewed additional client files, and identified the pre-signed and altered forms that are the subject of this settlement agreement.

16. On June 12, 2015, Worldsource issued a Cautionary Letter to the Respondent for using forms with photocopied client signatures to process transactions, and imposed a fine of \$3,500 on the Respondent.

17. In June 2015, Worldsource sent audit letters to all of the Respondent's clients. Worldsource did not receive any responses from clients to its letters.

Additional Factors

18. The Respondent has no previous disciplinary history.

19. There is no evidence that:

- a. the Respondent processed any trades or changes to client information without the knowledge or authorization of her clients;
- b. clients suffered any financial harm as a result of the maintenance or use of the Pre-signed Forms by the Respondent;
- c. the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which she would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner; and
- d. any clients have complained about the Respondent's conduct.

Principles Governing the Determination of this Panel

20. By Section 24.4.3 of By-law No. 1, the Hearing Panel is to:

- a. accept the Settlement Agreement; or
- b. reject it.

21. This is consistent with authorities on the topic which state that the Hearing Panel is not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. The role of the Hearing Panel at a hearing is fundamentally different than its role at a contested hearing, where the Panel's duty is to determine the correct penalty.

22. A penalty is not to be rejected unless it clearly falls outside a reasonable range of appropriateness.¹ The overriding objective is the protection of the public.²

¹ *Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16, at para. 37;

² *British Columbia Securities Commission v. Seifert*, [2007] BCCA 484, para. 31, citing with approval from *Regina v. 974649 Ontario Inc.*, 2001 S.C.C. 81, 2001 3 S.C.R. 575 at para. 49; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, paras. 59 and 68.

23. In *Re Jacobson*, 200712 MFDA, a Hearing Panel decision dated July 13, 2007 in Calgary, Alberta, stated the following factors should be considered:

- a. whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- b. whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- c. whether the settlement agreement addresses the issues of both specific and general deterrence;
- d. whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- e. whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f. whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g. whether the settlement agreement will foster confidence in the regulatory process itself.

24. In *Re Headley*, 200509 MFDA, pages 25 and 26, some relevant factors are listed as follows:

- a. the seriousness of the allegations proved against the Respondent;
- b. the Respondent's past conduct, including prior sanctions;
- c. the Respondent's experience and level of activity in the capital markets;
- d. whether the Respondent recognizes the seriousness of the improper activity;
- e. the harm suffered by investors as a result of the Respondent's activities;
- f. the benefits received by the Respondent as a result of the improper activity;
- g. the risk to investors and the capital markets in the jurisdiction were the Respondent to continue to operate in capital markets in the jurisdiction;
- h. the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

- i. the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j. the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k. previous decisions made in similar circumstances.

25. The MFDA Penalty Guidelines have factors which may be taken into account with regards to penalty. However, the MFDA Penalty Guidelines are not binding or mandatory but are simply intended to assist.

Considerations of the Panel

- A. Forgery and Falsified Forms are a serious breach of the MFDA Rule 2.1.1. That has been decided in numerous cases.³ *In The Matter of Arnold Tonies*, MFDA File No. 200503, Panel Decision dated June 27, 2005 at pages 16 and 19, a Respondent's failure to comply to the policies and procedures of the Member constitute a breach of the standard of conduct and MFDA Rules.
- B. In this case, the Member had explicit policies throughout the material time that prohibited the Approved Persons from obtaining and using pre-signed forms. On November 4, 2014, the Respondent misled Worldsource about her use of pre-signed forms. Worldsource's policies and procedures prohibit Approved Persons from using blank or partially completed pre-signed account forms.
- C. Moreover the prohibition on the use of pre-signed account forms applies regardless of whether:
 - (a) the client was aware or authorized the use of the pre-signed form; and

³ For example: *Re Byce*, MFDA File No. 201311, para. 6, Hearing Panel of Central Regional Council; *Re Ewart*, MFDA File No. 201528, para. 26, decision of Hearing Panel of the Central Regional Council; *Re Bell*, [2005] I.D.A.C.A. No. 15, para. 35, Alberta District Council, Panel Decision March 21, 2005

(b) the forms were actually used by the Approved Person for discretionary trading or other approved purposes.⁴

- D. There is no evidence of client harm.
- E. There is no evidence the Respondent processed any trades or changes to client information without authorization of the client.
- F. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct.
- G. There is no evidence of client complaints.
- H. The Respondent has not previously been subject to MFDA disciplinary hearings.

26. The role of a Hearing Panel at a settlement hearing may be contrasted with that of a Hearing Panel at a contested hearing. It is not the role of the Panel to determine the correct penalty, but rather whether the settlement was in a reasonable range taking into account the agreement of the parties in the settlement process.

27. Settlements are beneficial both to the MFDA, and to the public, and advance an objective of proscribing harmful or illegal activities by enabling parties to arrive at a flexible remedy tailored to address the interests of the Respondent, the public and the regulator.

Opinion and Decision

28. It is the opinion of the Panel that the Settlement Agreement:

- is reasonable and proportionate having regard to the conduct of the Respondent;
- sufficiently addresses the issue of both specific and general deterrence; and
- will maintain confidence in the integrity of the MFDA and the regulatory process.

⁴ *Re Byce, supra*

29. In the result, the Settlement Agreement is hereby approved and confirmed.

DATED this 21st day of November, 2016.

“Robert G. Ward”

Robert G. Ward, Q.C.
Chair

“Cecilia Wong”

Cecilia Wong
Industry Representative

“Bob Sokugawa”

Bob Sokugawa
Industry Representative

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