



**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 James O'Mara**

Heard: March 29, 2018 in Toronto, Ontario

Decision: March 29, 2018

Reasons for Decision: July 20, 2018

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC

Chair

Kenneth P. Mann

Industry Representative

Joseph Yassi

Industry Representative

Appearances:

Sarah Glickman

)

Counsel for the Mutual Fund Dealers

)

Association of Canada

)

Michael James O'Mara

)

Respondent, by teleconference

)

## **Background**

1. The Hearing Panel accepted the settlement agreement dated October 6, 2017 (“Settlement Agreement”) between the staff of the MFDA and Michael James O’Mara (“Respondent”). A copy of the Settlement Agreement is attached to these Reasons as Appendix “A”. The agreed facts are set out in Section III of the Settlement Agreement.

2. At the hearing staff agreed to amend the payment terms for the fine and costs so that there shall be a payment of \$1,000 at the date of the hearing with the balance of the agreed costs to be paid in 30 days. The panel accepted the amended agreement.

## **Contraventions**

3. The Respondent admitted that:

- a) between November 2015 and December 2015, he signed the signature of 3 clients on 5 account forms, contrary to MFDA Rule 2.1.1;
- b) on May 25, 2016, he misled the Member during the course of its investigation into his conduct when he falsely denied that he had signed the signature of 2 clients on 2 account forms, contrary to MFDA Rule 2.1.1; and
- c) on August 17, 2016, he misled the MFDA during the course of its investigation into his conduct when he falsely denied that he had signed the signature of 4 clients on 4 account forms, contrary to MFDA Rule 2.1.1.

## **Agreed penalties**

4. The agreed penalties were i) a 6 month prohibition from conducting securities related business in any capacity for a Member; and ii) a costs award of \$2,500.

## **Considerations**

5. 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 the Respondent of the agreed penalty.

## **Nature of the Misconduct**

6. Signing client signatures and misleading the Member and the MFDA during their investigations of the Respondent's conduct are conduct contrary to MFDA Rule 2.1.1.

## **Other considerations in determining acceptability of agreed penalties**

7. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees the Respondent would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

8. There was no evidence of client loss or lack of client authorization.

9. The Respondent has not previously been subject to MFDA disciplinary proceedings.

10. The Member has terminated the employment of the Respondent and the Respondent is no longer registered in the securities industry in any capacity.

11. The Respondent has provided staff with evidence of his inability to pay any further amounts towards a fine or costs.

12. By entering into the Settlement Agreement, the Respondent has accepted responsibility for the misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

13. The agreed penalties are within the recommendations of the MFDA penalty guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

### **Costs**

14. The costs award is reasonable.

### **Conclusion**

15. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

**DATED** this 20<sup>th</sup> day of July, 2018.

“Paul M. Moore”

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Paul M. Moore, QC  
Chair

“Kenneth P. Mann”

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Kenneth P. Mann  
Industry Representative

“Joseph Yassi”

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Joseph Yassi  
Industry Representative



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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Michael James O'Mara (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 November 2015 and December 2015, the Respondent signed the signature of 3 clients on 5 account forms, contrary to MFDA Rule 2.1.1;
- b) on May 25, 2016, the Respondent misled the Member during the course of its investigation into his conduct when he falsely denied that he had signed the signature of 2 clients on 2 account forms, contrary to MFDA Rule 2.1.1; and
- c) on August 17, 2016, the Respondent misled the MFDA during the course of its investigation into his conduct when he falsely denied that he had signed the signature of 4 clients on 4 account forms, 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 be prohibited from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA for a period of 6 months, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 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 by teleconference 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. Between June 29, 2015 and May 27, 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with TD Investment Services Inc. (“TD”), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Windsor, Ontario area.

9. On May 27, 2016, as a result of the conduct that is the subject of this Settlement Agreement, TD terminated the Respondent’s registration. He is not currently registered in the securities industry in any capacity.

#### **AP Signed Client Signatures**

10. At all material times, TD’s policies and procedures prohibited its Approved Persons, including the Respondent, from falsifying documents and signing documents on behalf of the clients.

11. At all material times, clients SM, BR and JG were clients of TD whose accounts were serviced by the Respondent.

12. On December 9, 2015, the Respondent signed client SM’s name in pen over the existing client signature on an account form (the “December 9 Form”).

13. On December 11, 2015, the Respondent signed client SM’s signature on 2 account forms (the “December 11 Forms”).

14. On November 24, 2015, the Respondent signed client BR’s signature on an account form.

15. On November 12, 2015, the Respondent signed client JG's signature on an account form.
16. In respect of client SM, on December 9, 2015, the Respondent submitted for processing account forms to TD, including the December 9 Form. TD identified a deficiency with these account forms and directed the Respondent to correct it.
17. Rather than correcting the deficiency and contacting the client to complete new account forms, the Respondent signed the client's signature on the December 11 Forms and submitted them to TD them for processing.
18. The account forms consisted of registered internal transfer forms and transaction and account maintenance forms.

### **Misleading the Member**

19. On May 25, 2016, the Respondent misled the Member during the course of its investigation into his conduct when he falsely denied to the Member that:
  - a) on November 24, 2015, he had signed client BR's signature on an account form Misleading the MFDA; and
  - b) on November 12, 2015, he had signed the client JG's signature on an account form.
20. On August 17, 2016, the Respondent misled MFDA Staff during its investigation into his conduct when he falsely denied that:
  - a) on December 11, 2015, he had signed client SM's signature on two account forms;
  - b) on November 24, 2015, he had signed client BR's signature on an account form; and
  - c) on November 12, 2015, he had signed the client JG's signature on an account form.

- d) During an interview on December 6, 2016, the Respondent subsequently admitted to MFDA Staff that he had engaged in the conduct described above at paragraphs 11-15.

### **TD's Investigation**

21. On March 29, 2016, TD identified one of the account forms that are the subject of this Settlement Agreement during the course of a daily branch review.

22. As part of its investigation, TD reviewed approximately 10% the files in client files serviced by the Respondent and identified the remainder of the account forms that are the subject of this Settlement Agreement. TD contacted by telephone the clients whose signature the Respondent signed to request that the clients attend at the branch to review their accounts. TD has received no client complaints.

23. On May 27, 2016, TD terminated the Respondent's registration.

### **Additional Factors**

24. There is no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

25. There is no evidence of client loss or lack of authorization for the underlying transactions for which the account forms were obtained.

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

27. The Respondent has provided Staff with evidence of his inability to pay any further amounts towards a fine or costs.

28. 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**

29. 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.

30. 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](http://www.mfda.ca).

31. 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.

32. 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.

33. 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.

34. 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.

35. 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 6<sup>th</sup> day of October, 2017.

“Michael James O’Mara”

\_\_\_\_\_  
Michael James O’Mara

“MW”

\_\_\_\_\_  
Witness – Signature

MW

\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”

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Shaun Devlin  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – Enforcement



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**ORDER**

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**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 Michael James O'Mara (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 the Respondent:

- a) between November 2015 and December 2015, the Respondent signed the signature of 3 clients on 5 account forms, contrary to MFDA Rule 2.1.1;
- b) on May 25, 2016, the Respondent misled the Member during the course of its investigation into his conduct when he falsely denied that he had signed the signature of 2 clients on 2 account forms, contrary to MFDA Rule 2.1.1; and

- c) on August 17, 2016, the Respondent misled the MFDA during the course of its investigation into his conduct when he falsely denied that he had signed the signature of 4 clients on 4 account forms, 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 be prohibited from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA, for a period of 6 months pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
4. 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]