



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: Stephen Pilkey

Heard: October 26, 2017 in Toronto, Ontario

Decision: October 26, 2017

Reasons for Decision: December 8, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC

Chair

Guenther W. K. Kleberg

Industry Representative

Robert C. White

Industry Representative

Appearances:

Sarah Glickman

)

Counsel for the Mutual Fund Dealers

)

Association of Canada

)

Corry Lomer

)

Counsel for the Respondent

)

Stephen Pilkey

)

Respondent, in person

)

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated April 24, 2017 (the “Settlement Agreement”) between the staff of the MFDA and Stephen Pilkey (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 agreement.

Contraventions

2. The Respondent admitted that:

- a) between about April 2013 and July 2015 the Respondent opened and maintained a bank account in his corporation’s name in trust for a client, and with the client's authorization accepted payments from the client's employer into the bank account which the Respondent paid to third parties on behalf of the client or invested in the client's mutual fund account with the Member, thereby engaging in conduct giving rise to a conflict or potential conflict of interest that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1,1;
- b) between December 2011 and November 2014, the Respondent obtained, possessed and, in some instances, used to process transactions, 15 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1; and
- c) between July 25, 2007 and June 24, 2015, the Respondent falsified 2 account forms in respect of 2 clients by altering information on the forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were: i) a fine of \$13,500; and ii) 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. Obtaining, possessing and using to process transactions pre-signed account forms is conduct contrary to MFDA Rule 2.1.1. By using his corporation without the consent or knowledge of his Member the Respondent allowed his interests and the client's to be potentially in conflict and not subject to oversight by his Member. Altering information on a form without having the client initial the alteration is improper.

Other considerations in determining acceptability of agreed penalties

6. There was no evidence of client loss.

7. There was no suggestion or allegation that the client was doing anything improper or that the Respondent was participating in improper conduct by the client.

8. On October 19, 2015, the Member issued a warning letter to the Respondent, requiring him to close the trust account, and placing him on close supervision for 6 months

9. The was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond any commissions and fees that he would normally be entitled to receive if the transactions had been carried out in the proper manner.

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

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

12. 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

13. The costs award is reasonable.

Conclusion

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

DATED this 8th day of December, 2017.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Robert C. White”

Robert C. White
Industry Representative

DM 587421



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: Stephen Pilkey

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Stephen Pilkey ("Respondent"), consent and agree to settlement of this matter by way of this agreement ("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 about April 2013 and July 2015 the Respondent opened and maintained a bank account in his corporation's name in trust for a client, and with the client's authorization accepted payments from the client's employer into the bank account which the Respondent paid to third parties on behalf of the client or invested in the client's mutual fund account with the Member, thereby engaging in conduct giving rise to a conflict or potential conflict of interest that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1.1;
- b) between December 2011 and November 2014, the Respondent obtained, possessed and, in some instances, used to process transactions, 15 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1; and
- c) between July 25, 2007 and June 24, 2015, the Respondent falsified 2 account forms in respect of 2 clients by altering information on the forms without having the clients initial the alterations, 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 \$13,500 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 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1.1; and
- d) 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 1984, the Respondent has been registered as a mutual fund salesperson.
8. Since 2005, 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) Ltd. (“Sun Life”), a Member of the MFDA.
9. At all material times, the Respondent conducted business in the Sarnia, Ontario area.

Operating a Trust Account for a Client

10. At all material times, Sun Life’s policies and procedures prohibited its Approved Persons, including the Respondent, from holding trust accounts, including the use of a personal account to make payments for a client.
11. At all material times, client SG was a client of Sun Life whose account was serviced by the Respondent.
12. In or around April 2013, client SG commenced employment with a foreign company (the “Employer”) and was entitled to certain benefits, including payments of insurance premiums and monies to be invested towards client SG’s retirement savings (the “Benefits Package”). The Employer required that these monies be deposited into a third party Canadian bank account for client SG’s benefit.
13. In order to facilitate the provision of the Benefits Package to client SG, the Respondent agreed to open a bank account in his corporation’s name in trust for client SG (the “Trust Account”).

14. The Respondent did not seek or obtain approval from Sun Life to open and operate the Trust Account.

15. Between about May 2013 and July 2015, on a monthly basis, the Respondent accepted monies for the Benefits Package wired by the Employer into the Trust Account.

16. The Respondent only used the monies in the Trust Account to benefit client SG, including by purchasing mutual funds and paying insurance premiums on the client's behalf.

17. Client SG authorized the Respondent to open and maintain the Trust Account and process transactions using the monies in the Trust Account using pre-authorized chequing ("PAC") forms to purchase the mutual funds.

18. The Respondent indicated on the PAC forms for that the Respondent was the payor of the monies.

Pre-Signed Account Forms

19. Between December 2011 and November 2014, the Respondent obtained, possessed and, in some instances, used to process transactions, 15 pre-signed account forms in respect of 8 clients.

20. The pre-signed account forms consisted of pre-authorized contribution forms, order forms and direction of payment forms.

Falsified Account Forms

21. Between July 25, 2007 and June 24, 2015, the Respondent falsified 2 account forms in respect of 2 clients by altering information on the forms without having the clients initial the alterations.

22. The falsified account forms consisted of a direction for payment form and a know-your-client form.

Sun Life's Investigation

23. In or around March 2015, Sun Life's compliance department became aware of the Respondent's use of the Trust Account when an error in processing a PAC contribution to client SG's account led Sun Life to identify that the Respondent was transferring payments to client SG's account.

24. As part of its investigation into the Trust Account, Sun Life reviewed all of the client files serviced by the Respondent and identified the pre-signed account forms and falsified account forms that are the subject of this Settlement Agreement.

25. On October 19, 2015, Sun Life issued a warning letter to the Respondent, required him to close the Trust Account, and placed him on close supervision for a period of six months.

Additional Factors

26. There is no evidence that the Respondent received any financial benefit from engaging in the conduct 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.

27. There is no evidence of client loss.

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

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.

IV. ADDITIONAL TERMS OF SETTLEMENT

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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 24th day of April, 2017.

“Stephen Pilkey”

Stephen Pilkey

“JI”

Witness – Signature

JI

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. 201747



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: Stephen Pilkey

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Stephen Pilkey (“Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (“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 about April 2013 and July 2015 the Respondent opened and maintained a bank account in his corporation’s name in trust for a client, and with the client’s authorization accepted payments from the client’s employer into the bank account which the Respondent paid to third parties on behalf of the client or invested in the

- client's mutual fund account with the Member, thereby engaging in conduct giving rise to a conflict or potential conflict of interest that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1.1;
- b) between December 2011 and November 2014, the Respondent obtained, possessed and, in some instances, used to process transactions, 15 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1; and
 - c) between July 25, 2007 and June 24, 2015, the Respondent falsified 2 account forms in respect of 2 clients by altering information on the forms without having the clients initial the alterations, 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 \$13,500 pursuant to s. 24.1.1(b) 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 Rules 2.1.4, 2.5.1, 1.1.2 and 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]