



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: Christopher Rainville

Heard: May 26, 2016 in Toronto, Ontario
Reasons for Decision: August 8, 2016

**ORAL REASONS FOR DECISION FOR ACCEPTANCE OF
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
David W. Kerr	Industry Representative
Colleen Waring	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Greg Temelini)	Counsel for the Respondent
)	

Decision

1. On May 26, 2016, the Hearing Panel accepted a settlement agreement (the “Settlement Agreement”) between the Mutual Fund Dealers Association of Canada (the “MFDA”) and Christopher Rainville (the “Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The Settlement Agreement sets out the agreed facts and agreed penalties.

Preliminary matter

2. The parties asked the Hearing Panel to abridge the notice period that is usually given to the public for the publication of a Notice of Settlement Hearing. The Rules provide that 10 days’ notice be given to the public. In this case the Notice of Settlement Hearing was posted on May 17, 2016, which was nine (9) days before the hearing date.

3. The Hearing Panel made the abridgement order, observing that this was not a contested matter.

Oral Reasons

4. The reasons were delivered orally at the hearing.

5. This is an edited version of the oral reasons which serves as the written record.

Contraventions

6. The contraventions in this case were:

- a) between November 2003 and January 2013, the Respondent altered and used to process transactions 89 account forms in respect of 46 clients obtained contrary to MFDA rule 2.1.1;
- b) between November 2003 and January 2013, the Respondent obtained and used to process transactions 39 pre-signed account forms, contrary to MFDA rule 2.1.1; and
- c) on January 6, 2010, and on April 20, 2012, the Respondent submitted an account form to his Member that was signed by the spouse of the client on behalf of the client, contrary to MFDA rule 2.1.1.

Agreed penalties

7. The agreed penalties set out in the Settlement Agreement are:

- i) the Respondent shall pay a fine of \$13,000 pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
- ii) the Respondent shall pay costs of \$2,500 pursuant to section 24.2 of MFDA By-law No. 1.

Important consideration

8. At first the panel was skeptical, based on Staff's submission, whether it would accept the agreement. However, it overcame its skepticism because of paragraph 20 of the agreement which provides:

"As a result of its investigation, IPC [which is the Member] imposed the following disciplinary measures on the Respondent to satisfy his obligations under same:

- a) a one-year period of close supervision which ended May 2015;
- b) a fine of \$3,000;
- c) a requirement that the Respondent successfully complete the Conduct and Practices Handbook course; and
- d) a 2.5 percent commission charge over one year which amounted to \$7,027.31."

9. It is important in assessing the acceptability of the agreement to take into consideration that the Member's Compliance Department took disciplinary action in this situation and did what it thought was appropriate in the circumstances. Its action cost the respondent more than \$10,000.

Agreed penalties

10. The agreed penalties in the Settlement Agreement will cost the respondent an additional \$13,000.

Submission of Respondent's Counsel

11. Respondent's counsel submitted that this has obviously been a long process that Mr. Rainville co-operated with an investigation with IPC and then subsequently co-operated with an investigation with the MFDA. The Respondent wanted to move forward and complete this matter. He came to the hearing from Ottawa and is returning to Ottawa and would really like to be able to return having had this matter put to rest. With that in mind, the Respondent supported the Settlement Agreement as signed. He considered it reasonable when one looks at the MFDA jurisprudence. The personal element was an important consideration here that Mr. Rainville really wanted to put the matter behind him. His counsel referred to paragraph 19 of the Settlement Agreement about how this process has allowed the Respondent to recognize his responsibility as an advisor and shed some light on how he wants to run his business. His focus was about the future.

Precedents

12. We looked at the precedent cases set out in the Book of Authorities provided by Staff. Counsel for the Respondent assured us that he has reviewed the relevant jurisprudence and that in his opinion the agreed penalties are within the range of reasonableness and appropriateness.

Other factors considered

13. The Hearing Panel considered that:

- a) The three violations were serious. There have been ample warnings given by the MFDA that the use of pre-signed forms or altering pre-signed forms is unacceptable.
- b) The submission of inappropriately completed forms such as the form that was filled out by the spouse of the client was inappropriate and contrary to the Rules.
- c) There was no evidence of any client harm. Indeed, it appears that the clients were aware of what was happening and tacitly consented. However, that was no excuse. It did not justify violation of the Rule.
- d) There was no profit to the Respondent other than the normal fees the Respondent would earn in dealing with client matters.
- e) The motivation of the Respondent was not related to malfeasance or moral turpitude. There was no fraud, no attempt to profit unfairly or to act in a dishonourable manner. Nevertheless, there was a clear violation of the rules for which there must be serious consequences.
- f) The fact the Member took action in investigating this situation, and that its Compliance Department dealt with the matter was a good thing.
- g) The Respondent co-operated with the Member and with the MFDA in the investigations.
- h) The Respondent has expressed remorse and accepts the seriousness of the contraventions.
- i) There is an impact on the Respondent taking into account all of the consequences.
- j) We noted and agreed that that it was appropriate that there was no suspension or interference with the Respondent's business, that the Respondent has re-written the Conduct Handbook course, and that the Respondent was unlikely to re-offend.
- k) There was no evidence of prior disciplinary problems on the part of the Respondent with the Member or the MFDA.
- l) The guidelines of the MFDA provide for a minimum fine of \$5,000 for offences of this nature, and there were three such offences.

Appropriateness of the agreed penalties

14. We found that the agreed penalties, together with the penalties incurred through the Member's disciplinary action, were within an acceptable (or, in the language often used in precedent cases, an "appropriate") range, although one member of the panel felt that the monetary amounts were at the highest end of the range.

Fair and reasonable

15. Nevertheless, the parties were represented by counsel and urged us to accept the agreement. That made it difficult for us not to conclude as we did that the agreement was fair and reasonable to the parties in all the circumstances.

Deterrence

16. The Hearing Panel concluded that the agreed penalties would act as a specific and general deterrent.

Conclusion

17. The Hearing Panel accepted the Settlement Agreement because it was in the public interest that it be accepted. The agreed penalties were within a range of appropriateness and were fair and reasonable, taking into consideration all of the facts. The agreed penalties will act as a sufficient deterrent to the Respondent and to the industry in general. Costs of \$2,500 were appropriate and reasonable and in line with costs awarded in similar cases.

This written version of the oral Reasons for Decision is
DATED this 8th day of August, 2016.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“David W. Kerr”

David W. Kerr
Industry Representative

“Colleen Waring”

Colleen Waring
Industry Representative

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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: Christopher Rainville

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Christopher Rainville, 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 2003 and January 2013, the Respondent altered and used to process transactions, 89 account forms in respect of 46 clients, contrary to MFDA Rule 2.1.1;
- b) between November 2003 and January 2013, the Respondent obtained and used to process transactions, 39 pre-signed account forms in respect of 26 clients, contrary to MFDA Rule 2.1.1; and
- c) on January 6, 2010 and on April 20, 2012, the Respondent submitted an account form to the Member for processing that was signed by the spouse of the client on behalf of 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 \$13,000 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 MFDA Rule 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 1993, the Respondent has been registered in the mutual fund industry.

8. Since February 2001, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with IPC Investment Corporation (“IPC”), a Member of the MFDA.

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

Altered Forms

10. Between November 2003 and January 2013, the Respondent altered and used to process transactions, 89 account forms in respect of 46 clients, predominantly by using liquid correction fluid or pen to change information on the account forms to reflect client instructions without obtaining client initials authorizing the changes.

11. The 89 account forms included application, trading, account change forms and Pre-Authorized Contribution Agreement forms.

Pre-Signed Account Forms

12. Between November 2003 and January 2013, the Respondent obtained and used to process transactions, 39 pre-signed account forms in respect of 26 clients.

13. The 39 pre-signed account forms included application, trading, address change, and account change forms.

Account Form Signed by Client’s Spouse

14. On both January 6, 2010 and April 20, 2012, the Respondent submitted an account form to IPC for processing that was signed by the spouse of the client NL on behalf of the client NL.

15. The spouse of client NL was also a client serviced by the Respondent.

IPC's Investigation

16. IPC's compliance group detected the conduct that is the subject of this Settlement Agreement in January 2014 after determining that one of the clients serviced by the Respondent was in possession of a pre-signed account form. IPC immediately commenced an investigation.

17. As part of its investigation, IPC completed a complete review of all client files serviced by the Respondent and identified the remainder of conduct set out above.

18. In addition, IPC sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading in their accounts. None of the clients reported any concerns to IPC.

19. On March 25, 2014, the Respondent provided the following written statement to IPC in relation to his misconduct:

I recognize my responsibility as an advisor and that I have not been as diligent as I should have been. This experience has shed light on how I run my business and how I need to protect it going forward.

20. As a result of its investigation, IPC imposed the following disciplinary measures on the Respondent, who satisfied his obligations under same:

- a) a one year period of close supervision, which ended in May 2015;
- b) a fine of \$3,000;
- c) a requirement that the Respondent successfully complete the Conduct and Practices Handbook Course; and
- d) a 2.5% commission charge over one year, which amounted to \$7,027.31.

Additional Factors

21. 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.
22. The Respondent cooperated with IPC's investigation into his conduct.
23. The Respondent understands the seriousness of his actions.
24. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
25. 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

26. 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.
27. 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.
28. 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.

29. 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 the 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.

30. 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.

31. 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.

32. 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 1st day of March, 2016.

“JM”

Witness – Signature

JM

Witness – Print name

“Christopher Rainville”

Christopher Rainville

“Shaun Devlin”

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



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Re: Christopher Rainville

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 Christopher Rainville (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 November 2003 and January 2013, the Respondent altered and used to process transactions, 89 account forms in respect of 46 clients, contrary to MFDA Rule 2.1.1;

- b) between November 2003 and January 2013, the Respondent obtained and used to process transactions 39 pre-signed account forms in respect of 26 clients, contrary to MFDA Rule 2.1.1; and
- c) on both January 6, 2010 and April 20, 2012, the Respondent submitted an account form to the Member for processing that was signed by the spouse of the client on behalf of 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 \$13,000 pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- 2. The Respondent shall pay costs in the amount of \$2,500 pursuant to section 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 requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or 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]