



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: Charles Lewis Rolland

Heard: December 15, 2021 by electronic hearing in Toronto, Ontario

Decision: December 15, 2021

Reasons for Decision: January 16, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth
Kenneth P. Mann
Selwyn Kossuth

Chair
Industry Representative
Industry Representative

Appearances:

Brendan Forbes)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Rafal Szymanski)	Counsel for Respondent
)	
)	
Charles Lewis Rolland)	Respondent
)	
)	

Background

1. By Notice of Settlement Hearing, dated December 1, 2021, a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Panel should accept a settlement agreement dated the 23rd day of November, 2021, (“Settlement Agreement”) entered into by the Staff of the MFDA (“Staff”) and the Respondent.

2. At the outset of the proceeding, the Panel considered a joint motion by Staff and the Respondent to move the proceedings “in camera”. The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether or not to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Panel’s reasons for doing so. The Panel also made an Order at the end of the hearing, declaring the hearing open to the public.

The Contraventions

3. In the Settlement Agreement, the Respondent admits that:

- a) between January 8, 2014 and May 8, 2019, the Respondent altered, and used to process transactions, 39 account forms in respect of 25 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between January 12, 2015 and September 18, 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 8 pre-signed account forms in respect of 5 clients, contrary to MFDA Rule 2.1.1.

The Facts

4. In the Settlement Agreement, Staff and the Respondent agreed to a series of facts, which are set out in Part III of the said Settlement Agreement. The Settlement Agreement is attached as Appendix “A” to these Reasons.

5. Commencing in 1997, the Respondent had been registered in the securities industry in Ontario. Since September 1, 2006, in Ontario and New Brunswick, and since April 10, 2014 in British Columbia, the Respondent had been registered as a dealing representative with FundEX

Investments Inc. (the “Member”), a member of the MFDA. At all material times, the Respondent conducted business in the Oshawa, Ontario area.

Discussion

6. The Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

- a) The facts admitted by the Respondent constitute misconduct in contravention of the By-laws, MFDA Rules or policies, or provincial securities legislation; and
- b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

7. The Panel accepted that the role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *Milewski (Re)*:

We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel “will tend 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. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.” [Emphasis added].

Sterling Mutual Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

8. MFDA Hearing Panels have consistently held that both categories of improper account forms, their creation and their use, constitute a contravention of the standard of conduct under MFDA Rule 2.1.1.

Price (Re), 2011 CanLII 72458 at paras. 115-138 (MFDA), SBA, Tab 6; *Symes (Re)*, 2017 LNCMFDA 104 at paras. 15-16.

Owen (Re), 2017 LNCMFDA 287 at paras. 31-34;

Lewis (Re), 2018 LNCMFDA 59 at para. 29.

9. “Pre-Signed Forms” is a generic term that applies to account forms that were incomplete at the time they were signed. Members and Approved Persons are only permitted to obtain, use

and rely upon forms that are executed by the client after all information on the form has been properly completed.

10. MFDA Hearing Panels have consistently held that obtaining or using pre-signed forms is a contravention of the standard of conduct prescribed under MFDA Rule 2.1.1.

Mandic (Re), [2000] Hearing Panel of the Central Regional Council, MFDA Hearing No. 20031, Panel Decision dated August 19, 2000 at para. 16

Dick (Re), [2018] Hearing Panel of the Central Regional Council, MFDA Hearing No. 201818, Panel Decision dated July 20, 2018 at para 5.

11. The MFDA has previously warned Approved Persons against the use of pre-signed forms. Among other things, the use of pre-signed forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized tracking, fraud and misappropriation.

MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017), Staff's Book of Authorities

MFDA Bulletin #0661-E dated October 2, 2015, Staff's Book of Authorities

12. The prohibition on the issue of pre-signed and altered account forms and their use, apply regardless of whether the client was aware, or authorized the use, of the pre-signed forms.

Price (Re), *supra* at paras. 122-124, SBA, Tab 6; *Symes (Re)*, *supra* at para. 18.

Owen (Re), *supra* at para. 32, SBA, Tab 8; *Lewis (Re)*, *supra* at para. 30.

13. The Panel considered in detail the agreed facts set out in the Settlement Agreement, and having done so, concluded that both allegations admitted by the Respondent had been proven and constitute misconduct in contravention of the MFDA By-laws, Rules or policies, or provincial securities legislation.

Penalty

14. The Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Panel considered the submissions of Staff, the submissions of the Respondent, the MFDA Sanction Guidelines and the substantial case law to which it was referred.

15. The Panel was mindful that the primary goal of securities regulation is the protection of the investor. The Panel was further mindful that in addition to protection of the public, the goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

16. Factors which Hearing Panels frequently consider when determining whether a penalty is appropriate, include the following:

- 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 activity;
- 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 activity in the capital markets; and
- k) Previous decisions made in similar circumstances.

Headley (Re), [2006] Hearing Panel of the Pacific Regional Council, MFDA File No. 200509, Reasons for Decision dated February 21, 2006, at para. 85.

17. The Panel also referred to the MFDA's Sanction Guidelines which came into effect on November 15, 2018. The Guidelines are not mandatory or binding on the Hearing Panels, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. The Guidelines recommend consideration of many of the same factors that have been applied in previous cases and are listed and applied above.

18. The Panel agreed with Staff's submissions that emphasis should be placed upon the following factors:

- a) The use of pre-signed forms and altered forms are serious breaches of the MFDA Rule 2.1.1. The conduct is further aggravated by the fact that some of the account forms were obtained after the MFDA issued bulletins warning about the use of pre-signed and altered forms.
- b) The Respondent has acknowledged that his conduct constitutes a serious contravention of the MFDA rules. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and has saved the MFDA the time, resources and expenses associated with a full discipline hearing.
- c) The Respondent has not previously been the subject of an MFDA discipline proceeding.
- d) There is no evidence of client loss, complaint or lack of authorization resulting from the Respondent's conduct described in the Settlement Agreement.
- e) There is no evidence that the Respondent received any financial benefits from his misconduct beyond any commissions and fees that he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.
- f) The proposed penalties are significant enough to act as both a general and specific deterrent warning that the use of pre-signed and altered forms will not be tolerated within the mutual fund industry.

Result

19. For the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties were imposed upon the Respondent:

- a) The Respondent shall pay a fine in the amount of \$12,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- b) The Respondent shall pay costs in the amount of \$2,500 in certified funds, upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-law No.1;
- c) The Respondent shall, in the future, comply with MFDA Rule 2.1.1; and
- d) 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 16th day of January, 2022.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Kenneth Mann”

Kenneth P. Mann
Industry Representative

“Selwyn Kossuth”

Selwyn Kossuth
Industry Representative



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Re: Charles Lewis Rolland

SETTLEMENT AGREEMENT

I. INTRODUCTION

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

- a) between January 8, 2014 and May 8, 2019, the Respondent altered, and used to process transactions, 39 account forms in respect of 25 clients by altering

information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and

- b) between January 12, 2015 and September 18, 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 8 pre-signed account forms in respect of 5 clients, 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 \$12,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No.1;
- b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 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 in person or by videoconference 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. Commencing in 1997, the Respondent has been registered in the securities industry in Ontario.

8. Since September 1, 2006, in Ontario and New Brunswick, and since April 10, 2014 in British Columbia, the Respondent has been registered as a dealing representative with FundEX Investments Inc. (the “Member”), a Member of the MFDA.

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

Altered Account Forms

10. Beginning in March 2018, the Member's policies and procedures required clients to initial or otherwise provide written authorization of any alterations to client documents after the document was signed by the client.

11. Between January 8, 2014 and May 8, 2019, the Respondent altered, and used to process transactions, 39 account forms in respect of 25 clients, by altering information on the account forms without having the client initial the alterations.

12. The altered account forms included: 30 Order Entry Forms, 3 Transfer Authorization Forms, 2 Know-Your-Client ("KYC") Update Forms, 2 Account Application Forms, 1 RESP Withdrawal Form and 1 Annual Conversion Form.

13. The alterations made by the Respondent consisted of alterations to: investment instructions, fund codes, fund description and KYC information.

Pre-Signed Account Forms

14. At all material times, the Member's policies and procedures prohibited the use by Approved Persons of pre-signed forms.

15. Between January 12, 2015 and September 18, 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 8 pre-signed account forms in respect of 5 clients.

16. The pre-signed account forms included: 6 Order Entry Forms and 2 Registered Education Savings Plan ("RESP") Withdrawal Forms.

The Member's Investigation

17. In June 2019, during an on-site examination of the Respondent's branch, Staff of the MFDA discovered some of the pre-signed and altered forms that are the subject of this Settlement Agreement in client files maintained by the Respondent.

18. The Member subsequently conducted a full review of client files maintained by the Respondent and discovered the remaining pre-signed and altered account forms that are described in this Settlement Agreement.

19. Commencing October 1, 2019, the Member placed the Respondent on close supervision for a period of 90 days.
20. As part of the Member's investigation, in December 2019, the Member sent letters to all clients for whom the Respondent obtained or used pre-signed and altered forms as described above. This letter included a three-year transaction summary and the clients' KYC information for each of their accounts, and requested the clients contact the Member if they did not authorize any of the transactions or if they had any concerns regarding their recorded KYC information. None of the clients reported any concerns to the Member.
21. On February 27, 2020, the Member issued a warning letter to the Respondent in respect of the conduct described above.
22. The Member deducted \$15,000 from the Respondent's commissions for the cost of carrying out the strict supervision and issuing the client letters.

Additional Factors

23. There is no evidence that the Respondent received any financial benefit from the conduct set out above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
24. There is no evidence of client loss, complaints or lack of authorization.
25. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
26. 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.
27. The Respondent states that he engaged in the conduct described within the settlement agreement for the purpose of client convenience, but he acknowledges that this is not an acceptable justification for obtaining pre-signed or using altered forms without obtaining client initials.

IV. ADDITIONAL TERMS OF SETTLEMENT

28. 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.

29. 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.

30. 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.

31. 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 agrees to waive any rights to a full hearing, a review hearing or appeal 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.

32. 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.

33. 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.

34. 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 23rd day of November, 2021.

“Charles Lewis Rolland”

Charles Lewis Rolland

“MF”

Witness – Signature

MF

Witness – Print Name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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Association canadienne des courtiers de fonds mutuels

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Re: Charles Lewis Rolland

ORDER

WHEREAS on December 9, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of Charles Lewis Rolland (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated November 25, 2021 (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 MFDA By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that:

- a) between January 8, 2014 and May 8, 2019, the Respondent altered, and used to process transactions, 39 account forms in respect of 25 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between January 12, 2015 and September 18, 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 8 pre-signed account forms in respect of 5 clients, 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 \$12,000 in certified funds upon acceptance of the Settlement Agreement, 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 in certified funds upon acceptance of the Settlement Agreement, 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, 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]

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