



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: Romina Romano

Heard: November 22, 2017 in Vancouver British Columbia

Decision: November 22, 2017

Reasons for Decision: December 8, 2017

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Robert G. Ward, QC

Chair

Barbara E. Fraser

Industry Representative

Holly A. Millar

Industry Representative

Appearances:

Christopher Corsetti

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Counsel for the Mutual Fund Dealers

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Association of Canada

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Romina Romano

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Respondent, In Person

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BACKGROUND

1. This hearing was duly constituted by the Mutual Fund Dealers Association of Canada (“MFDA”). The disciplinary hearing was set to be heard and was heard on November 22, 2017. The parties agreed on the facts.

AGREED STATEMENT OF FACTS

2. Staff of the MFDA (“Staff”) and Romina Romano (“Respondent”) entered into an Agreed Statement of Facts dated August 18, 2017. Paragraphs 8 through 22 of the Agreed Statement of Facts are as follows:

Registration History

8. The Respondent has been registered in the securities industry since 2005.
9. Between February 5, 2009 and February 10, 2015, the Respondent was registered in British Columbia as a mutual fund salesperson (now known as a Dealing Representative) with HSBC Investment Funds (Canada) Inc. (“HSBC”), a Member of the MFDA.
10. At all material times the Respondent was designated as a Branch Manager with HSBC.
11. On February 10, 2015, the Respondent resigned from HSBC.
12. The Respondent is not currently registered in the securities industry in any capacity.
13. At all material times the Respondent carried on business in the Vancouver, British Columbia area.

The Respondent Signed the Signatures of 2 Clients

14. At all material times, HSBC prohibited Approved Persons from Signing Client signatures.
15. On January 29, 2015, the Respondent signed the signatures of 2 clients on 3 Know-Your-Client account forms and submitted the forms for processing.

Pre-Signed Account Forms

16. At all material times, HSBC prohibited its Approved Persons from Maintaining or using blank or partially complete pre-signed account forms.
17. In or about March 2014, the Respondent, obtained, possessed and used 1 pre-signed mutual fund contribution form.

HSBC's Investigation

18. In February 2015, HSBC conducted a branch review of the Respondent's branch and identified the forms that are the subject of this agreed statement of facts.
19. In February 2015, HSBC conducted a review of all files handled by the Respondent.

Additional Factors

20. The Respondent has not previously been the subject of MFDA disciplinary proceeding.
21. There is no evidence that:
 - a) the Respondent processed any trades or changes to client information without the authorization of the clients;
 - b) clients suffered any financial loss;
 - c) the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he (sic) 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.

THE LAW

3. MFDA Rule 2.1.1 provides that each Member and Approved Person shall:
 - a) Deal fairly, honestly and in good faith with clients;
 - b) Observe high standards of ethics and conduct in the transaction of business;
 - c) Avoid practices detrimental to the public interest
 - d) Have experience and training consistent with the standards prescribed by the Rule and generally by the MFDA.

4. Rule 2.2.3 provides that “Each Member shall designate a trading partner, director or officer ...who shall be responsible for approval of opening of new accounts and the supervision of account activity”.

5. Thus, all applications and approvals of trades are subject to supervision.

The Prohibition is Well-Known

6. The MFDA has produced notices making it clear that pre-signed account forms are unacceptable. For example:

- a) MFDA Staff Notice MSN-0035 dated December 10, 2004 (as updated in March 2013);
- b) MFDA Notice MSN-0066 dated October 31, 2007 (as updated in March 2013);
- c) MFDA Bulletin No. 00661E dated October 2, 2015.

7. The use of pre-signed account forms, widely known as unacceptable, affects the integrity and reliability of account documents, can destroy an audit trail, have a negative impact on Member complaint handling, and has a potential for misuse in the form of unauthorized trading, fraud and misappropriation.

8. MFDA Notice No. MSN-0066 (supra) notes that the prohibition applies whether or not:

- a) The client is aware or authorized the use of the pre-signed forms; and
- b) The forms were actually used for discretionary trading or other improper purpose.

9. Each Approved Person is required to comply with the policies of the Members with which they are registered. The Members are expected to be aware of their regulatory obligations and to implement policies and procedures to implement compliance. If Approved Persons disregard those obligations, the Member’s ability to supervise the conduct of the Approved Person and protect the interests of the clients and the public is undermined.

10. The Member in this case had explicit policies throughout the material time period which prohibited an Approved Person signing client signatures.

The Disciplinary Process

11. Under the MFDA Rules, the Respondent is given wide latitude to answer any allegations brought. In other words, there is an effort to treat each Respondent according to the rules of natural justice.

12. This is not a criminal matter. Staff is not required to prove anything beyond a reasonable doubt. Indeed, the balance of probabilities is the test. Nevertheless, the burden of proof is on the MFDA staff to prove on the balance of probabilities any facts relied upon. That burden has been recognized explicitly by the MFDA since at least 2010¹. In other words, if there is a fact to be relied upon by the MFDA staff to show culpability on the part of a Respondent, or that there are serious consequences to the public, the onus is on the MFDA staff to prove that it is more likely than not that such consequences are to be considered. No such consequences have been alleged or proven.

13. In October of 2007 (updated in January 2017) the MFDA noted in MSN-00066 that signature falsification includes such matters as correcting information on a signed document without the client initialing the document to show that the change was approved; reproducing the client initials when the client forgot to initial; and that signature falsification is a violation of the Rules whether it is done for the purpose of client convenience, is done with the client's consent and regardless of whether the client complains or suffers financial harm.

¹ Oversight Review Report of the Mutual Fund Dealers Association of Canada, July 6, 2010 at pages 30-31.

Principles Applicable to Penalties

14. The principles covering the appropriate penalty are well known and are set forth in re *Headley (Re)* 2006 MFDA 3 at 25-26. As set forth in that case, the factors frequently considered by a hearing panel include:

- 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 in similar circumstances.

15. It might be trite to say that protection of the investing public is the rubric under which all applicable principles fall.

16. In considering the matters raised in the *Re Headley* case as applied to this case, the panel considered the following factors:

- a) The Respondent did not process any trades or changes to client information without client authorization;

- b) The client did not suffer any financial loss;
- c) The Respondent did not receive any financial benefit from the misconduct;
- d) No clients have complained;
- e) The Respondent has not previously been the subject of any MFDA disciplinary proceeding;
- f) The Respondent admitted to the breach and cooperated in the investigation;
- g) Pursuant to MFDA Rule 2.2.3, all applications and trades of Ms. Romano were supervised.

17. The panel has also considered precedents relied upon by counsel as well as the Penalty Guidelines.

18. It appears clear to the Panel that:

- a) the Respondent recognizes the seriousness of the improper activity;
- b) the Respondent has been absent from the industry for a substantial amount of time awaiting the conclusion of this matter by the Hearing Panel;
- c) there has been no harm suffered by any member of the public;
- d) there has been no benefit received by the Respondent from the impugned activity;
- e) there is no risk whatsoever to investors and the capital markets in the jurisdiction were the Respondent to continue to operate in capital markets in the jurisdiction;
- f) there has been no damage caused to the integrity of the capital markets in the jurisdiction;
- g) while signing a client's signature on an account form and the use of pre-signed forms are serious breaches of Rule 2.1.1, the need for both specific and general deterrence is satisfied in this case; and
- h) the protection of the integrity of the MFDA's enforcement processes is assured.

Prior decisions

19. The panel has considered the prior decisions cited by counsel. While it is no doubt problematical to find precedents which are identical, in our judgment the precedents are distinguishable, certainly respecting the penalties.

20. The panels considering Settlement Agreements are required to determine whether or not to approve an agreement arrived at between the parties. Absent a finding that the agreements are not within a reasonable range of appropriateness, the Settlement will be approved. Such is the case in *Re Pang*, (2016) MFDA File No. 201563, Decision dated July 5, 2016; *Re Chan*, (2016) MFDA File No. 201564, Decision dated, March 14, 2016; *Re Martin*, (2016) MFDA File No. 201602, Decision dated June 3, 2016; and *Re Van Schothorst*, (2017) MFDA File No. 201678, Decision dated April 12, 2017. In the instant case, the Panel is to determine an appropriate penalty, not to determine whether a prior agreement is unreasonable.

21. Decisions where there is damage to the public, a failure to cooperate or lack of contrition are likewise distinguishable; such is the case in *Re Tonnies*, (2005) MFDA File No. 200503, Decision dated June 27, 2005.

Principles Guiding our Decision

22. There is a great deal of latitude for the MFDA to act and the punishment varies dramatically in the various cases. In our view, the most serious breach by Ms. Romano is that she was a Branch Manager, and as such was held subject to a higher standard and expectation than others.

23. We are concerned that this process has already had a serious detrimental effect on the Respondent's chosen career and is likely to continue to haunt her. A suspension may be considered as tantamount to losing a livelihood completely in this industry, and we believe she has already suffered a severe penalty.

OPINION AND DECISION

24. In the instant case, we consider that it is proper to order penalties that are somewhat lower than might otherwise prevail.

25. It is hereby ordered:

- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of one month, commencing from the date of the Hearing Panel's Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall successfully complete the Branch Manager Course offered by the Canadian Securities Institute prior to being designated as a Branch Manager;
- c) the Respondent shall pay a fine in the amount of \$1,000, pursuant to section 24.1.1(b) of By-law No. 1; and
- d) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1.

26. 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 8th day of December, 2017.

“Robert G. Ward”

Robert G. Ward, QC
Chair

“Barbara E. Fraser”

Barbara E. Fraser
Industry Representative

“Holly A. Millar”

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Industry Representative

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