



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: Hussein Shivji

Heard: April 30, 2019 in Vancouver, British Columbia
Decision: April 30, 2019
Reasons for Decision: June 10, 2019

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield
Holly A. Millar
Darryl Gossen

Chair
Industry Representative
Industry Representative

Appearances:

Christopher Corsetti)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Shaun T. Frost)	Counsel for the Respondent
)	
)	
Hussein Shivji)	Respondent, in person
)	
)	

1. On April 30, 2019, the Hearing Panel approved a Settlement Agreement concluded on November 8, 2018, between the Mutual Fund Dealers Association of Canada (“MFDA”) and Hussein Shivji (the “Respondent”). The Order provides that the Respondent shall forthwith pay a fine of \$11,000 and costs of \$2,500 as a consequence of obtaining, possessing, and in some instances using to process transactions, nine pre-signed account forms in respect of five clients, falsely representing to a member of the MFDA that he did not control or possess any pre-signed forms, and using a signature stamp rather than his own signature to complete various forms, all contrary to the Rules of the MFDA.

Agreed Facts

2. The agreed facts are set forth in the Settlement Agreement. From December 7, 2005 to October 6, 2016, the Respondent was registered in British Columbia as a mutual fund salesperson, now known as a dealing representative, with Worldsource Financial Management Inc. (“Worldsource”), a member of the MFDA. The Respondent carried on business in the Richmond, British Columbia area. The Respondent resigned from Worldsource on October 6, 2016, and is not currently registered in the securities industry in any capacity.

3. Worldsource’s policies and procedures prohibited its Approved Persons from conducting business using blank or partially complete pre-signed account forms, including photocopies of pre-signed account forms, and prohibited the use of a signature stamp.

4. Between 2010 and 2014, the Respondent obtained, possessed, and in some cases used to process transactions, 9 pre-signed account forms pertaining to 5 clients. Between 2010 and 2014, the Respondent falsely represented to Worldsource on its annual registration questionnaire that he did not control or possess any pre-signed account forms. The forms consisted of switch forms; Know-Your-Client (“KYC”) update forms; redemption forms; and a new account application form.

5. In addition, and contrary to Worldsource’s policies and procedures, the Respondent used a signature stamp that resembled his handwritten signature. The Respondent authorized his assistant to apply the signature stamp on 62 account forms in respect of 22 clients. The forms consisted of plan application forms; switch forms; letter of direction; KYC update forms; internal transfer

forms; internal automatic transaction forms; redemption forms; and purchase forms. Those forms were submitted to Worldsource for processing.

6. Worldsource identified the pre-signed forms and signature stamp forms in the course of a routine branch review on June 1, 2016. No other issues were identified in relation to the Respondent's files.

7. The Respondent has not previously been the subject of MFDA disciplinary proceedings. There is no evidence that the Respondent processed any transactions without the authorization of his clients; that clients suffered any financial loss; that the Respondent received any financial benefit beyond the commissions to which he would ordinarily be entitled had the transactions been carried out properly; or that any clients have complained about the Respondent's conduct.

Analysis

8. This is another instance in which a dealing representative has engaged in the use of pre-signed forms notwithstanding regular communications from the MFDA reminding members and dealing representatives that their use is prohibited.

9. It is well known that the use of pre-signed forms constitutes a violation of MFDA Rule 2.1.1 that prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each member and approved person deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. Hearing panels have continually held that obtaining or using pre-signed account forms is a contravention of the standard of conduct demanded under MFDA Rule 2.1.1.

10. The use of pre-signed forms is prohibited because they may adversely affect the integrity and reliability of documents; destroy the audit trail; impact the ability of approved persons to produce valid documentation to support transactions that come into question; mislead member supervisory personnel; negatively affect the credibility of the approved person; negatively affect member complaint handling; and facilitate other misconduct such as unauthorized trading, fraud and the misappropriation of funds: see MFDA Notice #MSN-0066 dated October 31, 2007

(updated March 4, 2013 and January 26, 2017). The prohibition applies whether or not the client was aware of, or authorized the use of, the forms and whether or not the forms were actually used by the approved person for discretionary trading or other improper purposes.

11. The use of the signature stamp contravened Worldsource's policies and procedures and MFDA Rules 2.10, 1.1.2 and 2.1.1.

12. The accepted principle is that a hearing panel will not reject a settlement agreement unless the proposed penalty falls outside the reasonable range of appropriateness. As stated by counsel, settlements advance the MFDA's regulatory objective of protecting the public by proscribing activities that are harmful to the public while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent: see *Re Sterling Mutuals Inc.*, MFDA File No. 200820, August 21, 2008, Ontario Regional Council, and *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484, at para. 31.

13. When considering whether a settlement falls within the reasonable range of appropriateness the Panel will consider criteria identified in other cases, namely, whether the settlement is in the public interest and the penalty imposed will protect investors; whether the settlement is reasonable and proportionate having regard for the Respondent's conduct; whether the settlement addresses the issues of specific and general deterrence; whether the settlement will prevent recurrence of the type of conduct in question; and whether the settlement will foster confidence in the integrity of the MFDA and the regulatory process itself: see *Re: Jacobson*, 2007 MFDA 27, p. 9.

14. With regard to the penalty itself, the assessment of reasonableness will take into account a number of factors including the seriousness of the allegations; the Respondent's past conduct; whether the Respondent recognizes the seriousness of the improper activity; the benefits derived from the improper activity; the risk to investors and the capital markets should the Respondent continue to participate in the mutual fund industry; the damage to the integrity of the capital markets occasioned by the Respondent's conduct; the need for specific and general deterrence; and prior decisions in comparable circumstances.

15. In this instance, counsel cites three comparables: *Re: Kathryn Dee Nokony*, MFDA File No. 201663, November 21, 2016, Pacific Regional Council, imposing a fine of \$11,000 and costs

of \$2,500 for the possession and use of 5 pre-signed forms for 5 clients; *Re: Brian Blundell*, MFDA File No. 201557, May 31, 2016, Pacific Regional Council, imposing a fine of \$10,000 and costs of \$1,000 for the possession and use of 10 pre-signed forms for 3 clients where the dealing representative had represented to the Member that he possessed no such forms; and *Re Kenneth Zukowski*, MFDA File No. 201552, May 16, 2016, Central Regional Council, imposing a fine of \$12,000 and costs of \$2,500 for the possession and use of 12 pre-signed forms in respect of 4 clients, the alteration of 3 pre-authorized contribution agreement forms in respect of 2 clients, and the failure on four occasions to accurately respond to the member's compliance inquiries.

16. The Panel is of the view that the penalty of \$11,000 and the requirement to pay costs in the amount of \$2,500 fall within the reasonable range of appropriateness having regard for the fact that the Respondent was engaged in the securities industry for a lengthy period of time and must be taken to have known that the use of pre-signed forms and the signature stamp was prohibited; the number of contraventions is substantial; and the Respondent represented to the Member that he did not possess any pre-signed account forms. The Panel is mindful of the fact that the Respondent has not been the subject of prior discipline proceedings, he has not inappropriately benefitted from the misconduct, no client has suffered harm, and he has admitted his misconduct and acknowledged its seriousness.

17. The principal consideration in this case must be deterrence, both specific to the Respondent, and general to participants in the mutual fund industry as a whole. The Settlement Agreement serves that purpose.

18. For the foregoing reasons, the Settlement Agreement is approved.

DATED this 10th day of June, 2019.

“Ian H. Pitfield”

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Chair

“Holly A. Millar”

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Industry Representative

“Darryl Gossen”

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Industry Representative

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