



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: Neil Rutley

Heard: September 24, 2015 in Toronto, Ontario
Reasons for Decision: October 2, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Sarah Glickman)	For the Mutual Fund Dealers Association of
)	Canada
)	
)	
Neil Rutley)	Personally in attendance without counsel
)	

Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on Thursday, September 24, 2015. The full Settlement Agreement, dated June 25, 2015, entered into between Staff of the MFDA and Neil Rutley (“Mr. Rutley” or the “Respondent”) is available on the MFDA website and will not be set out in detail here. Mr. Rutley appeared at the Settlement Hearing and was not represented by counsel.

2. The hearing was one of three hearings relating to pre-signed account forms heard by the present Panel on September 24, 2015 under a recent MFDA procedure called the “Bulk Track Hearing Process.” The Bulk Track process, instituted a few years ago by the MFDA, is described as follows in the Staff Submission to the Panel: the Bulk Track Hearing Process “is intended to promote the efficient use of time and resources by MFDA Staff, Hearing Panels and Respondents by allowing for the processing of multiple cases of a similar nature or type before a single Hearing Panel at a single sitting.” Each case is, however, considered in a separate proceeding and in the case of a Settlement Hearing in a separate *in camera* proceeding.

3. The Panel accepted the proposed Settlement Agreement in the *Rutley* case at the September 24, 2015 hearing, with reasons to follow. These are our reasons for the *Rutley* decision.

4. Since February 1976, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investors Group Financial Services Inc. (“Investors Group”). At all material times, the Respondent conducted business in Belleville, Ontario.

Allegations

5. Proceedings against the Respondent were commenced by a Notice of Settlement Hearing, dated July 16, 2015. In the Settlement Agreement the Respondent admits that:

- a) between November 2005 and February 2014, the Respondent obtained and maintained 16 blank pre-signed forms in respect of 8 clients, contrary to MFDA Rule 2.1.1; and
- b) on February 12, 2014, the Respondent accepted cash from a client, thereby failing to comply with Investors Group anti-money laundering procedures, contrary to MFDA Rules 2.5.1 and 1.1.2.

Pre-Signed Account Forms

6. “Pre-signed account forms” is a generic term which is applied to a variety of situations where an Approved Person seeks to rely on a client’s signature on a document when the signature was not provided by the client at the time the document was completed.

7. Mr. Rutley admits that he obtained and maintained 16 blank pre-signed forms in respect of 8 clients, contrary to Rule 2.1.1. The account forms consisted of order entry forms, know-your-client forms and bank account authorization forms.

8. Hearing Panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1. (See *Re Byce* File No. 201311; and *Re Price* File No. 200814.) The Panel in *Re Price* sets out in detail a number of MFDA Staff Notices relating to the prohibition of such forms. MFDA Staff Notice MSN-0066, issued in 2007, states, in part, under the heading “PROHIBITION ON USE OF PRE-SIGNED FORMS”:

“The purpose of this Notice is to emphasize that it is contrary to MFDA requirements for Members and Approved Persons to obtain pre-signed forms from their clients. Members may only use forms that are duly executed by the client after information on the form has been properly completed. As indicated in [earlier Bulletins] where MFDA staff find pre-signed forms in the course of completing compliance reviews, these deficiencies may be referred directly to the MFDA Enforcement Department.”

9. The use of pre-signed account 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 trading, fraud and misappropriation. As the Hearing Panel explained in *Re Price* (at paragraphs 122-124):

“Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading....At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client....Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client’s signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.”

Accepting Cash from a Client

10. The Respondent admits that on February 12, 2014, he accepted \$9,950 from a client, thereby failing to comply with the Member’s anti-money laundering procedures, contrary to MFDA Rules 2.5.1 and 1.1.2.

11. Investors Group’s policies and procedures contained the following prohibition: “Cash should not be accepted.” Although the Respondent, following the client’s instructions, invested the cash in the client’s Registered Retirement Savings Plan account, his actions violated the Member’s anti-money laundering policies and procedures.

12. As stated in *Re Frank* (File No. 201407) at paragraphs 56-58:

“MFDA Rule 2.5.1 requires Members to establish, implement and maintain policies and procedures to ensure that the handling of its business is in accordance with MFDA By-laws, Rules and Policies and with applicable securities legislation....Such policies and procedures are meaningless and cannot achieve their intended objectives if Approved Persons are not required to comply with them....In the context of policies and procedures of a Member, and especially policies designed to facilitate regulatory supervision by the Member, the failure of an Approved Person to comply with the Member’s policies constitutes a regulatory violation.”

Terms of Settlement

13. The Respondent agreed to the following terms of settlement:
- a) the Respondent shall pay a fine in the amount of \$10,000 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; and
 - c) the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.1.1, and 2.5.1.

Acceptance of Settlement Agreement

14. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.

15. No harm was suffered by investors in this case and there is no evidence that the Respondent completed any trades using pre-signed account forms. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct and recognizes its seriousness.

16. A fine of \$10,000 (plus costs of \$2,500) is not an insignificant amount. The fine is in line with the MFDA Penalty Guidelines, where the suggested minimum fine for breach of MFDA 2.1.1 (Standard of Conduct) is \$5,000 and the minimum fine for breach of a Member's Policies and Procedures is also \$5,000.

17. The penalty imposed is also not out of line with the cases cited by counsel. See, with respect to pre-signed account forms: *Re Byce* (File No. 201311); *Re Moro* (File No. 200714); *Re*

Kahlon (File No. 201438); *Re Kant* (File No. 201337); *Re Sowunmi* (File No. 201338); and *Re Ewart* (File No. 201528).

18. The Respondent has never been the subject of a disciplinary proceeding by the MFDA and cooperated with Staff during its investigation into his conduct. By entering into the Agreement, the Respondent saved the MFDA the time, resources, and expense associated with conducting a full hearing of the allegations.

19. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.”

20. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter.

21. As a recent Panel stated (*Re Keshet*, September 3, 2014, File No. 201419 at paragraph 7) “It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness.” There are many similar statements by MFDA Panels.

22. The penalty agreed to in this case falls within “a reasonable range of appropriateness.”

23. For the above reasons we accepted the Settlement Agreement.

DATED this 2nd day of October, 2015.

“Martin L. Friedland”

Martin L. Friedland, C.C., Q.C.
Chair

“Brigitte J. Geisler”

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Industry Representative

“Kenneth P. Mann”

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