



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: Mohamad Mohtaz Sawwaf

Heard: October 29, 2018 in Toronto, Ontario

Decision: October 29, 2018

Reasons for Decision: January 17, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC
Guenther W.K. Kleberg
Joseph Yassi

Chair
Industry Representative
Industry Representative

Appearances:

H.C. Clement Wai)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Clarke Tedesco)	Counsel for the Respondent
)	
)	
Mohamad Mohtaz Sawwaf)	Respondent, in person
)	
)	

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 Monday, October 29, 2018. The full Settlement Agreement, dated October 29, 2018, entered into between Staff of the MFDA and Mohamad Mohtaz Sawwaf (“Mr. Sawwaf or the “Respondent”) is available on the MFDA website. Mr. Sawwaf appeared in person at the hearing with counsel.
2. The Panel accepted the proposed Settlement Agreement at the conclusion of the October 29th hearing, with reasons to follow. These are our reasons for the decision.
3. From August 22, 2007 to October 3, 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA. Between January 14, 2010 and October 3, 2016, Investors Group designated the Respondent as a branch manager. At all material times, the Respondent conducted business in the Mississauga, Ontario area.
4. On October 3, 2016, Investors Group terminated the Respondent’s registration for the matters detailed in the Settlement Agreement and in these reasons. The Respondent is not at present registered in the securities industry in any capacity.

Contraventions

5. A Notice of Hearing was issued by the MFDA on August 19, 2018 containing three allegations:

“**Allegation #1:** Between November 2007 and August 2012, the Respondent, or his assistant for whom he was responsible, obtained, possessed and, in some instances, used to process transactions, seven pre-signed account forms in respect of five clients, contrary to MFDA Rule 2.1.1.

Allegation #2: Between May 2012 and August 2015, the Respondent, or his assistant for whom he was responsible, falsified and in some instances, used to process transactions, three account forms in respect of three clients, by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

Allegation #3: Between July 15, 2014 and October 2016, the Respondent processed purchases of mutual funds in the accounts of 19 clients which were subject to deferred sales charges, without keeping records that the clients were informed of all fees and charges in accordance with MFDA Rules 2.4.4, contrary to Rule 5.1(b)(iv) and Rule 1.1.2.”

The Settlement Agreement

6. In paragraph 4 of the Settlement Agreement, the Respondent admits the above allegations (There are a few insignificant changes).

7. In paragraph 5 of the Settlement Agreement, the Respondent agrees and consents to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$10,000 in certified funds upon acceptance of the Settlement Agreement (the “Fine”), pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) 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 3 months, commencing the date of the order of the Hearing Panel accepting the Settlement Agreement pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement (“Costs”), pursuant to s. 24.2 of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.1.1., 2.4.4. and 5.1(b)(iv); and
- e) the Respondent will attend in person on the date set for the Settlement Hearing.

Agreed Facts

8. **Pre-signed Account Forms.** The Respondent agrees in paragraphs 11-13 of the Settlement Agreement that at all material times Investors Group’s policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining or using pre-signed account forms;

that between November 2007 and August 2012, the Respondent, or his assistant for whom he was responsible, obtained, possessed and, in some instances, used to process transactions, seven pre-signed account forms.

9. Hearing Panels have consistently held that obtaining or using pre-signed forms contravenes the standard of conduct set out in MFDA Rule 2.1.1.

10. **Altered Forms.** In paragraphs 14 and 15 of the Settlement Agreement, the Respondent agrees that he or his assistant for whom he was responsible, altered and in some instances, used to process transactions, three account forms in respect of three clients, by altering information on the account forms without having the clients initial the alterations. The altered forms consisted of three transfer authorizations.

11. Again, Hearing Panels have consistently held that altering forms without obtaining the client's initials contravene the standard of conduct set out in MFDA Rule 2.1.1.

12. **Failure to Keep Records of Disclosure of Deferred Sales Charge (“DSC”) Fees.** In paragraph 16 of the Settlement Agreement, the Respondent agrees that between July 18, 2013 and October 2016, the Respondent or his assistant, processed purchases and redemptions of mutual funds in the accounts of 19 clients which were subject to Deferred Sales Charges without the Respondent keeping records that the client was informed of all fees and charges.

13. The MFDA rules make it clear that transaction fees or charges must be disclosed by Approved Persons to clients. See MFDA Rule 2.4.4. And see MFDA Staff Notice MSN-0078. The objective of Rule 2.4.4 is to assist investors in making decisions with respect to transactions in their account by requiring Members to inform investors of transaction fees and charges prior to acceptance of their order.

14. Approved Persons must also keep records of the transactions. Rule 5.1 states:

“Every Member shall keep such books, records and other documents as are necessary for proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others and shall keep such books, records and documents as may be otherwise required by the Corporation. Such books and records shall contain as a minimum the following...(b) an adequate

record of each order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such record shall show... (iv) evidence that the client was informed of all fees and charges in accordance with Rule 2.4.4.”

15. The MFDA is not alleging in the present case that the Respondent did not tell the clients about the deferred sales charges, but rather that the Respondent did not keep a record of having told them. According to MFDA counsel, this requirement of keeping a record under Rule 5.1(b)(iv) applies not only to the initial purchase of the mutual fund with a deferred sales charge but also to any charge on the sale of such funds. We were told by counsel for the MFDA that this may be the first MFDA hearing where a lack of a record of such a redemption is the subject of a Hearing.

Acceptance of the Settlement Agreement

16. 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.

17. The Respondent has not previously been the subject of MFDA proceedings and there is no evidence that the Respondent received any benefit from the conduct set out beyond the commissions or fees he would ordinarily be entitled to receive.

18. There is also no evidence of client loss or lack of authorization related to the Respondent’s use of pre-signed or altered forms as described above.

19. The Settlement Agreement states in paragraph 18 that Investors Group contacted all of the clients involved in these transactions and reimbursed them for DSC fees paid as well as any future DSC fees if and when they occur on the mutual funds that were subject of their client complaints. To date, Investors Group has repaid the clients \$46,899.65.

20. As counsel for the MFDA argued, generally a lesser penalty is warranted where there is clear evidence that the client requested or acquiesced in the use of the pre-signed forms or where there is clear evidence that the Approved Person used the pre-signed forms to give effect to the client’s intentions, whether the client was aware the Approved Person was using a pre-signed form or not. Counsel for the MFDA argues that the present case fits into this category, where a lesser penalty is warranted.

21. The Respondent cooperated with the MFDA. Moreover, by entering into a Settlement Agreement the Respondent has accepted responsibility for his misconduct and saved the MFDA the time, resources and expenses associated with conducting a full hearing.

22. Prohibition of registration with an MFDA member for three months coupled with a \$10,000 fine is a significant penalty. It offers a substantial measure of specific and general deterrence.

23. The combination of a three month prohibition and a \$10,000 fine in this case is not out of line with the cases cited to us by counsel for the MFDA. See *Re Martell*, File No. 201782; *Re Marshall et al.*, File No. 201785; *Re Byce*, File No. 201311; and *Re Weller*, File No. 201544.

24. 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.”

25. 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. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

26. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: “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, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: “A District Council considering a settlement agreement 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.” This is particularly so where, as in the present case, experienced counsel are involved and, as described by counsel for the Respondent, “hard bargaining” took place.

27. The penalty and the costs agreed to in this case clearly fall within “a reasonable range of appropriateness.”

28. For the above reasons the panel accepted the Settlement Agreement.

DATED this 17th day of January, 2019.

“Martin L. Friedland”

Martin L. Friedland, CC, QC
Chair

“Guenther W.K. Kleberg”

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Industry Representative

“Joseph Yassi”

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