



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: Christine S.P.T. Scott

Heard: March 13, 2017 in Toronto, Ontario

Decision: March 13, 2017

Reasons for Decision: April 12, 2017

**REASONS FOR DECISION FOR ACCEPTANCE OF
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth

Chair

Wanda Traczewski

Industry Representative

Guenther W. K. Kleberg

Industry Representative

Appearances:

Lyla Simon

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Counsel for the Mutual Fund Dealers
Association of Canada

Barry Papazian

Counsel for the Respondent, Christine Scott

BACKGROUND

1. By Notice of Settlement Hearing dated November 9, 2016, a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada (“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 November 9, 2016 (“Settlement Agreement”), entered into by the Staff of the MFDA (“Staff”) and Christine S.P.T. Scott (“Respondent”).

2. At the outset of the proceedings, the Panel considered a joint motion by Staff and the Respondent to move the proceedings “*in camera*”. The Panel granted that 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 to accept or reject the Settlement Agreement.

The Allegations

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

- a) In August 2014, she processed a redemption in the amount of \$8,545 in client AP’s account based upon email instructions received from a third party fraudster, who had gained unlawful access to client AP’s email account and subsequently misappropriated the proceeds of the redemption, thereby failing to comply with the Member’s policies and procedures which required the Respondent to verify the identity of the client and prohibited her from accepting trade instructions by email, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1;
- b) On August 20, 2014, she requested, obtained and used a pre-signed account form in order to change a client’s banking information with the Member, thereby failing to comply with the Member’s policies and procedures, contrary to MFDA Rules 1.1.2 and 2.5.1, and failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1;

- c) On August 20, 2014, she processed a redemption in the account of client AP without making inquiries of client AP regarding which funds were to be redeemed and in what amounts, thereby failing to observe high standards of ethics and conduct in the transaction of business, contrary to Rule 2.1.1, and engaging in discretionary trading, contrary to MFDA Rule 2.3.1(a);
- d) On August 25, 2014, she completed portions of an account form wherein the Respondent falsely represented that she had verified the clients' identities, thereby failing to comply with the Member's policies and procedures, contrary to MFDA Rules 1.1.2 and 2.5.1, and failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1; and
- e) On September 12, 2014, she disclosed confidential information about the investments held in client MB's account, without client MB's authorization, thereby failing to comply with the Member's policies and procedures, contrary to MFDA Rules 1.1.2 and 2.5.1, and failing to observe high standards of ethics and conduct in the transaction of business, and failing to maintain in confidence all information relating to a client and the affairs of a client, contrary to MFDA Rule 2.1.1 and Rule 2.1.3.

The Facts

4. The agreed facts are set out in detail in the Settlement Agreement. At the time of the events under consideration, the Respondent was employed as a dealing representative in Quebec with IG. The Respondent was first registered as a dealing representative on February 1, 2012.

5. At all material times giving rise to the events described in the Settlement Agreement, the Respondent carried on business from Ottawa, Ontario.

6. From June 2012 to present, the Respondent was also licensed to sell insurance.

Overview

7. This proceeding concerns the fraudulent accessing of client AP's email account by an unknown person ("the fraudster"), such that clients AP and MB (spouses) unwittingly became the target of fraudulent activity within their mutual fund accounts, including the unauthorized withdrawal of monies from client AP's account.

8. In breaching MFDA Rules, as well as the Member's policies and procedures, the Respondent facilitated the unauthorized withdrawals of monies from the account of client AP.

9. In or about 2004, clients AP and MB became mutual fund clients of IG, and client AP opened a registered retirement savings plan ("RRSP") with IG in the amount of \$10,000.

10. After client AP's RRSP account was opened, a series of various IG dealing representatives serviced the accounts of clients AP and MB over the next ten years; however, there were no further transactions in the accounts of clients AP or MB.

11. In or about January 2014, the Respondent became the IG dealing representative responsible for servicing the accounts of clients AP and MB.

12. On February 13, 2014, the Respondent sent a letter to clients AP and MB introducing herself and requesting an in-person meeting with them.

13. From April to August 2014, the Respondent was on leave from IG; however, during this time, she maintained her IG email account and checked voicemail messages from home. She did not schedule client meetings while she was on leave.

14. In or about July 2014, client AP placed a telephone call to the Respondent to advise of a change of residential address for herself and client MB.

15. Client AP's telephone call was answered by an individual at IG (a colleague of the Respondent) who advised that the Respondent was on leave. The colleague further advised client AP that a Client Update form was required in order to complete an address change, and the colleague subsequently emailed the required forms to client AP for completion by each of clients AP and MB.

16. In or about August 2014, the Respondent had not received the completed forms from clients AP and MB in order to effect the address change. As such, on August 13, 2014, the Respondent sent an email to client AP advising that:

- a) She had been away, and was now going through her "to-do list";
- b) She had spoken with her colleague who advised her that she (her colleague) had emailed client AP the Client Update forms in or about July 2014;
- c) The forms may be difficult to print due to being legal-size; and
- d) She would, therefore, send new copies of the forms via regular post for completion by clients AP and MB.

17. On August 20, 2014, the Respondent received an email from client AP's email account. The August 20, 2014 email requested "up to date account information", the "cash available balance per account", and "current holdings". Prior to this date, the Respondent had not met with clients AP and MB, spoken with either of them on the telephone, or received any written correspondence from them.

18. Unbeknownst to the Respondent, client AP's email account had been fraudulently accessed by a fraudster, who proceeded to use client AP's email account to communicate via email with the Respondent, ultimately resulting in a fraudulent redemption being facilitated by the Respondent in the RRSP account of client AP.

19. Thereafter, a series of email exchanges between the Respondent and fraudster using AP's email account occurred.

20. On August 20, 2014, the Respondent sent an email to the fraudster (via the email of client AP) advising that the redemption proceeds would have to be sent via cheque since IG did not have the clients' banking information on file.

21. The Respondent advised client AP that in order to sign up for electronic transfers, clients AP and MB would need to fill out a Client Update form. Accordingly, the Respondent attached the form to the email she sent to client AP. The Respondent stated in her email to client AP (but who was in fact the fraudster), "so if you could fill out the new address section of the form and sign and date, I can fill out the rest on my end."

22. The Respondent received a blank pre-signed form from the fraudster via the email account of client AP, and then proceeded to complete the form. The Respondent acknowledges that this conduct contravened MFDA Rule 2.1.1, and the Member's policies and procedures.

23. On this occasion, the Respondent likewise failed to make inquiries of client AP as to which funds were to be redeemed and in what amounts, and instead made the selection herself and completed the form accordingly. The Respondent acknowledges that this conduct constituted discretionary trading which contravened MFDA Rules 2.3.1(1) and 2.1.1, and the Member's policies and procedures.

24. A further series of email exchanges between the Respondent and the unknown person who fraudulently using client AP's email account then occurred.

25. On August 25, 2014, the Respondent completed portions of a Corporation Account Information and Trading Resolution form. On the form, the Respondent falsely stated that she had, on the date of the completion of the form, verified clients AP and MB's identities through signature and photo comparisons with the clients' passports, when she had not done so. The Respondent acknowledges that this conduct contravened MFDA Rule 2.1.1, and the Member's policies and procedures.

26. On August 26, 2014, the Respondent completed an IG Investment Instructions – Redemptions/Transfers form for client AP for a redemption in the amount of \$8,545, and forwarded the documentation to IG head office for processing.

27. A further series of email exchanges between the Respondent and the fraudster using client AP's email account then occurred on August 26th, 2014 and August 27th, 2014.

28. On August 27, 2014, the redemption in the amount of \$8,545 was completed and the funds were transferred to the Calgary corporate account as discussed between the Respondent and the fraudster.

29. On or about September 8, 2014, clients AP and MB completed the Client Update forms, including their updated address, and they were submitted to IG head office.

30. On September 8, 2014, the Respondent submitted the fraudulent Client Update forms to IG head office.

31. A further series of email exchanges between the Respondent and the fraudster using AP's email account then occurred between September 12, 2014 and September 15, 2014.

32. On or about September 22, 2014, client AP received a confirmation letter setting out the particulars of the RRSP redemption that had been processed in her account. Client AP was immediately aware that she had neither requested nor authorized this transaction. Client AP also noted that a Calgary address (not her and client MB's address) was present on the body of the letter, even though the envelope itself was addressed to her and client MB's correct Ontario address.

33. On September 22, 2014, client AP placed a telephone call to the Respondent and left her an urgent voicemail message advising of the unauthorized redemption, and the address concerns.

34. On September 22, 2014, client AP additionally emailed the Respondent stating that she had left her an urgent voicemail advising of the unauthorized redemption, and the address concerns, and requested that the Respondent call her as soon as possible.

35. On September 23, 2014, the fraudster (posing as the Respondent) emailed client AP advising that the RRSP redemption and the confirmation letter had both been errors and would be corrected. The fraudster (posing as the Respondent) further advised client AP that she was away on business and due to return on September 30, 2014, at which time they could meet and discuss matters. Client AP, not realizing the fraudster had sent her this email, agreed to this proposed course of action via return email to the Respondent (but who was actually the fraudster).

36. On September 23, 2014, the Respondent returned client AP's telephone call. Client AP advised the Respondent of the unauthorized redemption, and the address concerns. During the course of the discussion, to her shock, client AP discovered the emails the fraudster had sent and received via client AP's email account, as they had been automatically sent to a dormant folder in client AP's computer. The Respondent and client AP agreed that they would cease communicating via email and discuss matters only over the telephone.

37. After the Respondent became aware that a fraudster was using client AP's email, a few more email exchanges between the Respondent and the fraudster occurred. The fraudster attempted to have the Respondent process a redemption in the RRSP account of client MB, but this did not occur.

38. From September to December 2014, IG conducted a detailed and thorough investigation of the events that had taken place.

39. IG contacted client AP, reviewed her client file, and interviewed client AP and the Respondent. During the interview process, the Respondent was cooperative with the investigation conducted by IG.

40. IG also investigated whether there were any other IG clients affected by the Respondent's actions, and no additional concerns were identified.

41. The Respondent did not derive any monetary benefit from the transaction in question.

42. In October 2014, IG reversed the unauthorized redemption that had been processed in the account of client AP, and also provided her with a market adjustment account, for a total reimbursement of \$8,873.

43. At all material times, IG had policies and procedures in place regarding:

- a) Verification of a client's identity;
- b) Privacy and client confidentiality;
- c) Third party disbursements;
- d) The provision of information on a spousal account; and
- e) Blank pre-signed forms and discretionary trading.

44. On December 2, 2014, IG issued a warning letter to the Respondent regarding breaches of the Member's policies and procedures, including warning the Respondent for having:

- a) Failed to follow IG know-your-client requirements and best practices, including employing a face-to-face meeting in order to take client trade instructions;
- b) Signed as having witnessed clients' identification when she had not seen the documents in question or met the clients; and
- c) Shared confidential client information about one spouse with the other spouse when this had not been authorized by the client.

45. At the material time of the events herein, i.e. mid-2014, the Respondent was 26 years old and relatively new to the financial services industry, having been registered only since January 2012.

46. In June 2014, the Respondent spent some time in the hospital for treatment of a medical issue, and was then recovering at home for the two months that followed. It was during this period that the impugned events took place.

47. The Respondent did not receive any personal or financial benefit from her misconduct, nor did she have any improper purpose or intent.

48. Client AP continued to have her accounts serviced by the Respondent after the events described herein, until such time as the Respondent's role with IG changed when she was promoted internally. The Respondent states that this demonstrates that the client herself recognized the Respondent's inadvertence and did not wish her any ill will.

49. IG is fully aware of all the circumstances herein and has elected to support the Respondent, including ensuring her compliance with all internal policies and procedures, as well as those of the MFDA.

Discussion

50. It is trite to say that the rules, regulations and policies of the MFDA are designed to preserve the integrity of its members and to protect the public with whom they deal. It is, therefore, of the utmost importance that they be followed and that deficiencies identified as a result of MFDA audits or member investigations not only be corrected, but that this be done in a timely fashion. As the facts set out above demonstrate, a timely resolution of those deficiencies occurred here.

51. The Panel was mindful that there is no evidence of material harm to the clients as IG reimbursed the client. The client did not complain and in fact chose to continue to use the services of the Respondent after the Respondent made full and complete disclosure of the deficiencies.

52. The Respondent has admitted that she is responsible for her conduct. She indicated that it was caused because of her limited experience as a dealing representative and because of the medical issues she faced at the time of the occurrence of the offending deficiencies.

53. The Panel was mindful that when determining whether it would be appropriate to accept a proposed settlement, MFDA hearing panels typically take into consideration whether the settlement:

- a) would be in the public interest and whether the penalty imposed will protect investors;
- b) is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- c) addresses the issues of both specific and general deterrence;
- d) will prevent the type of conduct described in the Settlement Agreement from occurring again in the future; and
- e) will foster confidence in the integrity of the Canadian capital markets and the MFDA, and in the regulatory process itself.

Sterling Mutuals Inc. (Re), 2016 LNCMFDA 77 at para13 (page 10) Reasons for Decision dated June 27, 2016 [*“Sterling Mutuals”*], Staff’s Book of Authorities, Tab 12.

54. The Hearing Panel was also mindful of the words found in *Re Milewski* [1999] I.D.A.C.D. No. 17 decided on July 28, 1999. The panel in *Re Milewski* made the following comments at page 9:

Although a Settlement Agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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. Put another way, the

District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

RESULT

55. For all of the above reasons, the Panel has concluded that the Settlement Agreement is reasonable. Accordingly, the following penalties and other terms of settlement are imposed upon the Respondent:

- a) The Respondent shall be suspended 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 final Order herein, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
- b) 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;
- c) The Respondent shall pay costs in the amount of \$5,000, 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, 2.1.3, 2.3.1(a), and 2.5.1; and
- e) 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 12th day of April, 2017.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Wanda Traczewski”

Wanda Traczewski
Industry Representative

“Guenther W. K. Kleberg”

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Industry Representative

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