



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: Susan Sears

Heard: March 5, 2018 in Edmonton, Alberta

Decision: March 5, 2018

Reasons for Decision: April 23, 2018

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, Q.C.)	Chair
Kathleen Jost)	Industry Representative
Richard R. Sydenham)	Industry Representative

Appearances:

Justin Dunphy)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Michael L. Byers)	Counsel for the Respondent, by teleconference
)	
)	
Susan Sears)	Respondent, by teleconference
)	

Background

1. This is a Settlement Hearing under Section 24.4 of By-Law No. 1 of the Mutual Fund Dealers Association of Canada (“MFDA”). The hearing was held on March 5, 2018. Due to inclement weather conditions, the Respondent appeared by telephone, as did her counsel. The full Settlement Agreement dated February 16, 2018 entered into between Susan Grace Sears (“Respondent”) and MFDA Staff is attached as Schedule “1” to these reasons for decision and its relevant provisions will not be repeated in detail here.
2. The Respondent has been registered in Alberta and British Columbia as a mutual fund salesperson, (now known as a dealing representative) since January 2004 with PFSL Investments Canada Ltd., (“PFSL”) a member of the MFDA. At all material times, the Respondent conducted business in the area of Grand Prairie, Alberta.
3. This Hearing Panel accepted the proposed Settlement Agreement at the conclusion of the March 5, 2018 hearing, with reasons to follow, which are now set out below.

Pre-signed Account Forms

4. At all material times, PFSL had in place policies and procedures which prohibited its Approved Persons from obtaining, holding or using pre-signed account forms.
5. The Respondent signed PFSL annual attestations in 2015 and 2016 acknowledging that she would not obtain pre-signed account forms.
6. Between September 2014 and May 2016, the Respondent obtained, possessed and used to process transactions 36 pre-signed account forms, consisting of 18 redemption forms and 18 exchange requests in respect of three clients. She said client convenience was the reason for obtaining and using the said forms.

Contraventions

7. The Respondent admitted in paragraph four of the Settlement Agreement that between September 2014 and May 2016, she obtained, possessed, and used to process transactions, 36 pre-signed account forms in respect of three clients, contrary to MFDA Rule 2.1.1.

Terms of Settlement

8. In paragraph 5 of the Settlement Agreement, the Respondent agreed to the following penalties:

- a) pay a fine in the amount of \$11,500 pursuant to s. 24.1.1. (b) of MFDA By-law No. 1;
- b) pay costs in the amount of \$2,500 pursuant to s. 24.2. of MFDA By-law No. 1;
 - i. the payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
 - (i) \$2,500 (fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - (ii) \$2,500 (costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - (iii) \$5,000 on or before the last business day of the 3rd month following the date of acceptance of the Settlement Agreement by the Hearing Panel;
 - (iv) \$4,000 on or before the last business day of the 6rd month following the date of acceptance of the Settlement Agreement by the Hearing Panel;
- c) the Respondent shall successfully complete an ethics or other industry course acceptable to the MFDA within one year of the Hearing Panel's Order; and
- d) the Respondent shall in future comply with MFDA Rule 2.1.1.

Acceptance of the Settlement Agreement

9. In determining if it was appropriate to accept the terms of the Settlement Agreement, this Hearing Panel took into consideration the following factors:

- b) PFSL undertook an investigation and reviewed all redemptions submitted by the Respondent between June 2015 and June 2016 that identified the remaining redemptions that are the subject of the Settlement Agreement;
- c) On or about July 29, 2016 PFSL issued letters to, among others, the 3 clients for whom the Respondent obtained the pre-signed account forms, and learned that no clients reported any concerns;
- d) On or about August 18, 2016, PFSL issued a warning letter to the Respondent in respect of the obtaining and using pre-signed account forms.
- e) there were certain mitigating factors applicable to the instant case, including:
 - i. was no evidence presented to the hearing to suggest any clients sustained losses or that the transactions were unauthorized;
 - ii. there was no evidence presented to the hearing to suggest the Respondent received any financial benefit from engaging in the misconduct in question, beyond the usual commission and fees to which she would be entitled if the transactions had been carried out in accordance with the MFDA Rules.
 - iii. by entering into the Settlement Agreement, the Respondent saved the MFDA the expenditure of time, resources and expenses that would have been required for a full hearing of the allegations.
 - iv. the Respondent has not previously been the subject of MFDA disciplinary proceedings.
- f) there were certain aggravating factors applicable to the instant case, including:
 - i. MFDA had advised Members and Approved Persons since October 31, 2007 in MFDA Staff Notices and Bulletins that possessing and using pre-signed forms is contrary to the obligations of MFDA Rule 2.1.1.
 - ii. the Respondent signed annual attestations in 2015 and 2016 acknowledging

that she would not obtain pre-signed account forms. This fact signifies that she well knew, or should have known that her conduct was contrary to those annual attestations, and was therefore consciously misleading the Member as to her intention to adhere to its policies and procedures.

- iii. MFDA Bulletin #0666-E, dated October 2, 2015 reminded Members and Approved Persons that “Signature Falsification” is not permissible under MFDA Rules which term includes obtaining and using pre-signed account forms, altered account forms and falsification of a client signature.
- iv. This Bulletin advised Members and Approved Persons that MFDA Staff would seek enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015. The Respondent is therefore taken to have been fixed with knowledge of the contents of the Bulletin and the consequences that would flow from being in possession of pre-signed forms after October 2, 2015.
- v. In the circumstances outlined in paragraph 9 f) (i)-(iv), the Respondent’s misconduct was serious, in that she must have known her conduct was violating her obligations under MFDA Rules yet took no steps to cease the non-compliant conduct when it was within her power to do so. Such conduct also resulted in her falling below the high standards of ethics and conduct in the transaction of business to be observed by Members and Approved Persons.

10. Enforcement Counsel sought a penalty which exceeds the minimum fine recommended by the Penalty Guidelines for an Approved Person’s breach of the standard of conduct by reason of both the number of forms at issue in the instant case, the “re-use” of account forms, and the post-bulletin misconduct.

11. The applicable case authority clearly establishes that hearing panels should respect settlements worked out by the parties unless it views the penalty as clearly outside the reasonable range of appropriateness. (see *Sterling Mutuals Inc. (Re)* MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008; and *Fike (Re)*

MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017).

12. The applicable case authority also clearly establishes that the prohibition against the use of pre-signed account forms applies regardless of whether the client knew or authorized their use and regardless of whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes. (see *Wellman (Re)* MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015 at para. 10.)

Appropriateness of the Proposed Penalty

13. Enforcement Counsel for the MFDA submits the fine together with the requirement in the Settlement Agreement that the Respondent complete an ethics or industry course will suffice as a penalty to meet the goals of specific and general deterrence to other Members and Approved Persons and will deter others in the capital markets from engaging in similar activity.

14. Enforcement Counsel cited in support of his submission the penalties imposed in a number of recent cases, including:

- a) *Duffy (Re)*, MFDA File No. 201686, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 27, 2017
- b) *Gleeson (Re)*, MFDA File No. 201723, Hearing Panel of the Central Regional Council, Decision and Reasons dated July 10, 2017
- c) *Coelho (Re)*, MFDA File No. 201551, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 25, 2016 and
- d) *Harris (Re)*, MFDA File No. 201558, Hearing Panel of the Pacific Regional Council, Decision dated July 5, 2016.

15. In the view of this Hearing Panel, the penalties in the above-cited decisions are comparable to the case at hand.

16. Moreover, this Hearing Panel accepts that the amount of the fine and costs and the

requirement that the Respondent take an ethics or industry course are appropriate in the circumstances, taking into account both the above cited mitigating and aggravating factors, including most particularly, the conduct which occurred after the issuance of MFDA Bulletin #0661-E on October 2, 2015.

17. In light of all the foregoing, this Hearing Panel is satisfied that the Settlement Agreement is in the public interest, is reasonable and proportionate, will promote general and specific deterrence, and will foster public confidence in the integrity of the Canadian capital markets and the industry. The Hearing Panel accordingly approves its terms.

18. This Hearing Panel thanks Enforcement Counsel for his helpful presentation and the Respondent and her counsel for their cooperation during the hearing.

DATED this 23rd day of April, 2018.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“Kathleen Jost”

Kathleen Jost
Industry Representative

“Richard R. Sydenham”

Richard R. Sydenham
Industry Representative

DM 608695

Schedule “1”

Settlement Agreement

File No. 201820



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: Susan Grace Sears

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Susan Grace Sears (“Respondent”), consent and agree to settlement of this matter by way of this agreement (“Settlement Agreement”).

2. Staff conducted an investigation of the Respondent’s activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) between September 2014 and May 2016, the Respondent obtained, possessed, and used to process transactions, 36 pre-signed account forms in respect of 3 clients, contrary to MFDA Rule 2.1.1.

5. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$11,500 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;
- c) the payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$2,500 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - iii. \$5,000 on or before the last business day of the 3rd month following the date of the acceptance of the Settlement Agreement by the Hearing Panel;
 - iv. \$4,000 on or before the last business day of the 6th month following the date of the acceptance of the Settlement Agreement by the Hearing Panel;
- d) if the Respondent fails to make any of the installment payments described above in sub-paragraph 5(c):
 - i. any outstanding balance of the Fine and Costs owed by the Respondent shall become immediately due and payable to the MFDA; and
 - ii. the Respondent shall be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the Fine and Costs owed by the Respondent is paid to the MFDA, pursuant to s. 24.3.13(c) of MFDA By-law No. 1;

- e) the Respondent shall successfully complete an ethics or other industry course acceptable to the MFDA within one year of the Hearing Panel's Order;
- f) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- g) the Respondent will attend in person, on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule "A".

III. AGREED FACTS

Registration History

7. Since January 2004, the Respondent has been registered in Alberta and British Columbia as a mutual fund salesperson (now known as a dealing representative) with PFSL Investments Canada Ltd. ("PFSL"), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Grand Prairie, Alberta area.

Pre-Signed Account Forms

9. At all material times, PFSL's policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining, holding, or using pre-signed account forms.

10. In January 2016 and November 2016, the Respondent signed PFSL's 2015 and 2016 annual attestations where she acknowledged that she would not obtain pre-signed account forms.

11. Between September 2014 and May 2016, the Respondent obtained, possessed, and used to process transactions, 36 pre-signed account forms in respect of 3 clients.

12. The pre-signed account forms consisted of 18 redemption forms and 18 exchange request forms.

13. The Respondent states that the pre-signed forms were obtained and used for the purposes of client convenience.

PFSL's Investigation

14. On or about June 2, 2016, PFSL identified some of the pre-signed account forms that are the subject of this Settlement Agreement as a result of a routine review of client files serviced by the Respondent. PFSL subsequently commenced an investigation and reviewed all of the redemptions submitted by the Respondent between June 2015 and June 2016, and identified the remaining pre-signed account forms that are the subject of this Settlement Agreement.

15. On or about July 29, 2016, as part of its investigation, PFSL sent letters to the 3 clients for whom the Respondent obtained pre-signed account forms, as well as a random sample of clients whose accounts were serviced by the Respondent, in order to determine whether the transactions in the clients' accounts were authorized. No clients reported any concerns.

16. On or about August 18, 2016, PFSL issued a warning letter to the Respondent for obtaining and using pre-signed account forms.

17. In March 2017 PFSL conducted a follow up audit of the Respondent which revealed no additional concerns with respect to pre-signed account forms.

Additional Factors

18. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

19. There is no evidence of any client loss or that the transactions were unauthorized.

20. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

21. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

22. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

23. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (“Settlement Hearing”). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

24. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

25. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent waives any rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this

Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;

- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; and
- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

26. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

27. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

28. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

DATED this 16th day of February, 2018.

“Susan Grace Sears”

Susan Grace Sears

“VR”

Witness – Signature

VR

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement

Schedule “A”

Order

File No. 201820



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: Susan Grace Sears

ORDER

(ARISING FROM SETTLEMENT HEARING ON MARCH 5, 2018)

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Susan Grace Sears (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent:

- a) between September 2014 and May 2016, obtained, possessed, and used to process transactions, 36 pre-signed account forms in respect of 3 clients, contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. the Respondent shall pay a fine in the amount of \$11,500 pursuant to s. 24.1.1.(b) of MFDA By-law No. 1;
2. the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
3. the payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
 - a) \$2,500 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - b) \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - c) \$5,000 on or before the last business day of the 3rd month following the date of the acceptance of the Settlement Agreement by the Hearing Panel;
 - d) \$4,000 on or before the last business day of the 6th month following the date of the acceptance of the Settlement Agreement by the Hearing Panel;
4. if the Respondent fails to make any of the installment payments described above in subparagraph 3:
 - a) any outstanding balance of the Fine and Costs owed by the Respondent shall become immediately due and payable to the MFDA; and
 - b) the Respondent shall be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the Fine and Costs owed by the Respondent is paid to the MFDA, pursuant to s. 24.3.13(c) of MFDA By-law No. 1;
5. the Respondent shall successfully complete an ethics or other industry course acceptable to the MFDA within one year of the Hearing Panel's Order;
6. the Respondent shall in the future comply with MFDA Rule 2.1.1; and

7. 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 [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]