



**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: Gary William Sexton**

Heard: February 27, 2020 in Toronto, Ontario

Decision: February 27, 2020

Reasons for Decision: April 14, 2020

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Joan Smart  
Linda J. Anderson  
Jeff Page

Chair  
Industry Representative  
Industry Representative

Appearances:

Jacklyn Neborak	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Dana Carson	)	Counsel for the Respondent
	)	
	)	
Gary Sexton	)	Respondent, in person
	)	
	)	

## **I. INTRODUCTION**

1. On January 31, 2020 the Mutual Fund Dealers Association of Canada (“MFDA”) commenced proceedings against Gary William Sexton (“Respondent”) by Notice of Settlement Hearing indicating that a settlement hearing would be held on February 27, 2020 in respect of a settlement agreement, dated January 30, 2020, (“Settlement Agreement”) entered into between staff of the MFDA (“Staff”) and the Respondent.

2. At the Settlement Hearing on February 27, 2020, the Hearing Panel, after hearing the submissions of counsel for the parties and considering the Settlement Agreement, decided to accept it. These are our reasons for that decision.

## **II. THE RESPONDENT’S ADMISSION OF CONTRAVENTIONS**

3. The Respondent admitted that he, or his assistants for whom he was responsible:

- a) between February 2012 and February 2018, obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 24 clients, contrary to MFDA Rule 2.1.1; and
- b) between February 2012 and December 2017, altered 37 account forms in respect of 35 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

## **III. PROPOSED SETTLEMENT**

4. Staff and the Respondent agreed to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$12,500 in certified funds upon acceptance of the Settlement Agreement, 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 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1; and;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1.

#### **IV. AGREED FACTS**

##### **Registration History - Ontario**

5. Since July 1996, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with FundEX Investments Inc. (the “Member”), a Member of the MFDA.

##### **Pre-Signed Account Forms**

6. At all material times, the Member had policies and procedures that prohibited its Approved Persons from obtaining or using pre-signed account forms.

7. Between February 2012 and February 2018, the Respondent, or his assistants for whom he was responsible, obtained, possessed, and used to process transactions, 29 pre-signed account forms in respect of 24 clients. The pre-signed account forms consisted of: 12 Know Your Client (“KYC”) Update forms; 6 Transfer Authorization for Registered Investments forms; 3 Order Entry forms; 3 Fund Company Application forms; 2 New Client Application forms; 2 Registered Education Savings Plan (“RESP”) Educational Assistance Payment forms; and 1 Family Education Savings Plan Application form.

##### **Altered Account Forms**

8. At all material times, the Member had policies and procedures that required client initials on all changes made to client documents.

9. Between February 2012 and December 2017, the Respondent, or his assistants for whom he was responsible, altered 37 account forms in respect of 35 clients by altering information on the account forms without having the client initial the alterations. The altered account forms consisted of: 21 KYC Update forms; 2 New Client Application forms; 2 Fund Company Application forms; 10 Order Entry forms; and 2 RESP Educational Assistance Payment forms.

10. The Respondent made alterations to the account forms, including alterations to investment instructions and KYC information.

## **The Member's Investigation**

11. On or about August 16, 2018, during a branch audit, the Member reviewed all client files serviced by the Respondent and identified the subject pre-signed and altered account forms.

12. On September 13, 2018, the Member issued a reprimand letter to the Respondent for pre-signed and altered account forms, and placed him under strict supervision. During the period of strict supervision, the Member imposed a monthly financial penalty of \$625 on the Respondent. The strict supervision and monthly penalty was to continue until the conclusion of the current MFDA proceeding. As of January 28, 2020, \$10,000 had been deducted from the Respondent's commissions. The Respondent also paid \$978 to the Member to cover the cost of client mailings.

13. On September 13, 2018, the Respondent signed a Letter of Undertaking from the Member acknowledging that he agreed with the facts and discipline set out in the Member's reprimand letter. He also signed an Acknowledgement agreeing that he had read, understood and agreed to comply with the Member's policies and procedures, all applicable rules and regulations of the MFDA, and provincial securities regulations in the jurisdictions in which he is registered.

14. On or about October 4, 2018, the Member sent a letter with a 3-year transactional summary to all clients serviced by the Respondent. The Member requested that the clients review their transaction summaries to ensure that the trading activity was completed as directed and to report any inconsistencies by October 26, 2018. No clients reported any concerns.

15. On March 4, 2019, the Member issued a warning letter to the Respondent with respect to the subject pre-signed and altered account forms, and on March 6, 2019, the Respondent signed a Letter of Undertaking agreeing to comply with the Member's policies and procedures, all applicable rules and regulations of the MFDA, and provincial securities regulations in the jurisdictions in which he is registered.

## **V. CONSIDERATIONS**

16. Section 24.4.3 of MFDA By-Law No. 1 provides that hearing panels may only accept or reject a settlement agreement.

17. It is generally accepted that a Hearing Panel will not lightly interfere in a settlement agreement reached between Staff and a respondent. See, for example, *Sterling Mutuals (Re)*, 2008 LNCMFDA 16 at para. 37.

18. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily: whether it was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and previous MFDA cases; whether it would serve as a specific and general deterrent; and whether it would be aligned with the MFDA's objectives to enhance investor protection and strengthen public confidence in the mutual fund industry.

19. MFDA Rule 2.1.1 requires that Approved Persons deal fairly, honestly and in good faith with clients; observe high standards of 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.

20. We found that, as admitted by the Respondent, the Respondent contravened MFDA Rule 2.1.1 when he, or his assistants for whom he was responsible: obtained, possessed and used to process transactions 29 pre-signed account forms in respect of 24 clients; and altered 37 account forms in respect of 35 clients by altering information on the account forms without having the clients initial the alterations.

21. In addition, those actions were contrary to the Member's policies which prohibited its Approved Persons from obtaining or using pre-signed account forms and required client initials on all changes made to client documents.

22. Obtaining and using pre-signed account forms and altering account forms can negatively impact the integrity of account documents, destroy the audit trail, impede a Member's ability to supervise accounts and respond to client complaints, and potentially allow for misuse such as unauthorized trading and misappropriation.

23. We considered several aggravating factors in reaching our decision, including that:

- a) the misconduct occurred over a number of years;

- b) the Respondent had been registered in the mutual fund industry for over 15 years when the subject misconduct commenced and ought to have been aware of, and complied with, the applicable Member policies and MFDA Rule; and
- c) the Respondent, or his assistants, obtained some of the pre-signed forms and altered some of the account forms after the MFDA had issued MFDA Bulletin #0661-E, dated October 2, 2015, in which the MFDA warned the industry against using pre-signed forms and altering account forms and indicated that it would be seeking higher fines in the future for such misconduct.

24. There were several mitigating factors that we considered in reaching our decision, including that:

- a) there was no evidence that the Respondent received any benefit from engaging in the misconduct beyond commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner;
- b) there was no evidence of client loss or lack of authorization for the underlying transactions;
- c) the Member took disciplinary action against the Respondent after identifying the misconduct, which appears to be intended to ensure his future compliance, and required the Respondent to pay to the Member a total of \$11,599 as at the date of the hearing;
- d) the Respondent had not previously been the subject of a MFDA disciplinary proceeding; and
- e) by entering into the Settlement Agreement, the Respondent accepted responsibility for his actions and saved the MFDA the time, resources, and expenses associated with a full hearing on the merits.

25. The proposed settlement was within a reasonable range of appropriateness, having regard to other decisions made by MFDA Hearing Panels in relation to similar conduct that occurred after the issuance of MFDA Bulletin #0661-E:

*Martin (Re)*, 2018 LNCMFDA 272

*Wong (Re)*, 2018 LNCMFDA 159

*Letourneau (Re)*, 2018 LNCMFDA 261

*Culliton (Re)* MFDA File No. 201966, Hearing Panel of the Central Regional Council dated February 25, 2020

We also note that in each of those cases costs of \$2,500 were awarded, which is the same as what was agreed to in this case.

## VI. CONCLUSION

26. We have concluded that the proposed settlement is proportionate and falls within a reasonable range of appropriateness, having regard to the Respondent's misconduct and previous MFDA cases. It should serve to prevent the Respondent from engaging in similar conduct in the future and deter others from doing so. Also, we are of the view that the settlement is aligned with the MFDA's mandate to enhance investor protection and strengthen public confidence in the mutual fund industry. Accordingly, we decided to accept the Settlement Agreement.

**DATED** this 14<sup>th</sup> day of April, 2020.

"Joan Smart"

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Joan Smart  
Chair

"Linda J. Anderson"

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Linda J. Anderson  
Industry Representative

"Jeff Page"

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Jeff Page  
Industry Representative

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