



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: Adrienne Elizabeth Benoit Simmons

Heard: October 25, 2018 in Toronto, Ontario

Decision: October 25, 2018

Reasons for Decision: January 25, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC
Guenther W. K. Kleberg
Kenneth P. Mann

Chair
Industry Representative
Industry Representative

Appearances:

Alan Melamud)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Ellen Bessner and Uri Snir)	Counsel for the Respondent
)	
)	
Adrienne E. B. Simmons)	Respondent, in person
)	
)	

Background

1. The Hearing Panel accepted the settlement agreement dated September 6, 2018 (“Settlement Agreement”) between the staff of the MFDA and Adrienne Elizabeth Benoit Simmons (“Respondent”). A copy of the Settlement Agreement is attached to these Reasons as Appendix “A”. The agreed facts are set out in section III of the Settlement Agreement.

Contraventions

2. The Respondent admitted that:
- a) between February 2006 and May 2016, she engaged in securities related business beyond the terms of her registration as a mutual fund salesperson by providing investment advice to at least 11 clients in respect of non-mutual fund securities, contrary to the Member’s policies and procedures, and MFDA Rules 1.1.1, 1.1.2, 1.1.5(a) and 2.1.1;
 - b) in February 2016, she altered and used to process transactions two 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; and
 - c) between November 2008 and February 2016, she obtained, possessed, and in some instances, used to process transactions, 17 pre-signed account forms in respect of 12 clients, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were: i) a one month suspension from doing business while with a Member; ii) a fine of \$15,000; and iii) a costs award of \$2,500.

4. On August 15, 2017 the Member placed the Respondent under strict supervision for one year and withheld 20% of her commissions. By the end of August 2018, in respect of her strict supervision, the Respondent had paid \$33,596.87 in commissions to the Member.

Considerations

5. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the agreed penalty.

Nature of the Misconduct

6. Providing investment advice in respect of non-mutual fund securities for which a mutual fund salesperson is not registered, and altering documents without clients initialing changes, and obtaining, possessing, and using pre-signed account forms are conduct contrary to MFDA rules referred to above under **Contraventions**.

7. MFDA Rule 1.1.1(a) requires that all securities related business must be carried on for the account of the Member and through the facilities of the Member. The Respondent's breach of Rule 1.1.1 subverted her Member's ability to supervise her activities and disrupted the closed system envisioned by Rule 1.1.1.

Other considerations in determining acceptability of agreed penalties

8. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct.

9. There was no evidence of client loss or lack of client authorization.

10. The Respondent has not previously been subject to MFDA disciplinary proceedings.

11. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

12. The agreed penalties are within the recommendations of the MFDA penalty guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and together with the payments the Respondent made to her Member for her strict supervision will serve as a specific and general deterrent.

Costs

13. The costs award is reasonable.

Conclusion

14. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 25th day of January, 2019.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Kenneth P. Mann”

Kenneth P. Mann
Industry Representative

DM 647978

Appendix “A”

Settlement Agreement

File No. 201894



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Re: Adrienne Elizabeth Benoit Simmons

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Adrienne Elizabeth Benoit Simmons (the “Respondent”), consent and agree to settlement of this matter by way of this agreement (the “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 Mutual Fund Dealers Association of Canada (“MFDA”):

- a) between February 2006 and May 2016, the Respondent engaged in securities related business beyond the terms of her registration as a mutual fund salesperson by providing investment advice to at least 11 clients in respect of non-mutual fund securities, contrary to the Member's policies and procedures, and MFDA Rules 1.1.1, 1.1.2, 1.1.5(a) and 2.1.1;
- b) in February 2016, the Respondent altered, and used to process transactions, 2 account forms in respect of 3 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- c) between November 2008 and February 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 17 pre-signed account forms in respect of 12 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 be suspended for a period of 1 month from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA commencing from the date of the Hearing Panel's 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 \$15,000 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rules 1.1.1, 1.1.2, 1.1.5(a), and 2.1.1; and
- e) 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. Between May 1994 and May 9, 2002, the Respondent was a registered in Ontario as a Registered Representative with Queensbury Securities Inc. (“Queensbury Securities”), a Dealer Member of the Investment Industry Regulatory Organization of Canada.

8. Since May 2002, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Queensbury Strategies Inc. (“Queensbury Strategies”), a Member of the MFDA. Since 2009, she has also been registered as a mutual fund salesperson in British Columbia.

9. At all material times, the Respondent conducted business in the Toronto, Ontario area.

Advising outside the Respondent’s registration

10. At all material times, Queensbury Strategies’ policies and procedures prohibited its Approved Persons from advising in securities without being registered under applicable securities legislation.

11. Since May 2002, while registered as an Approved Person with Queensbury Strategies, the Respondent was registered solely as a mutual fund and exempt market Dealing Representative, and was not registered to provide investment advice to clients or other individuals in respect of non-mutual fund securities or individual equity securities.

12. The Respondent states that when clients requested to invest in non-mutual fund securities, she would usually refer the client to Queensbury Securities. However, between February 2006 and May 2016, the Respondent provided information and advice to at least 11 clients with respect to publicly traded equity securities and options. In particular, the Respondent gave investment recommendations to clients, and provided her views about the likely future performance of specific securities.

13. By way of example, the Respondent provided advice to client NH with respect to shares of publicly traded equity securities on the Toronto Stock Exchange (“TSX”) by way of an email to client NH dated November 11, 2009, as follows:

“I have looked over the portfolio and I’m going to call you in a few moments but I want you to have my recommendations in writing too:

HOLD

[Bank A] – solid bank paying you 5.446%

[A Co.] – insurance company going through a bit of a rough period but paying 2.486% Should recover in long term

[B Co.] – oil and gas trust unit. The one I’m recommending we hold as it’s paying you 8.171% per year. I am nervous about the legislation coming down so am recommending we sell the other 2

[C Co.] – solid retailer paying you 2% with capital appreciation potential. It should do well in the future due to demographics. It’s good to support a great Canadian brand.

SELL

[D Co.] – has the lowest yield of the trusts – legislation issues

[E Co.] – at a 52 week high with a yield of only 0.4%. Take a profit

[F Co.] – at a 52 week high – legislation issues potentially¹

14. Further, the Respondent provided investment advice and account updates outside of her registration status in at least the following instances:

Client(s)	Date of communication	Description of investment advice
BB	Undated	Confirming whether the clients bought shares of 2 publicly traded companies and to enter a limit sell order for shares of another publicly traded company
BB and CT	November 28, 2013	Recommending the clients add shares of 2 publicly traded companies and that the Respondent would look for other “stock opportunities” to invest \$10,000
AG	January 28, 2016	Recommending the clients to keep some, but not all shares in a publicly traded company
AG and KM	February 1, 2016	Evaluating whether to keep shares of a publicly traded company

¹ Bank A and A Co. thru F Co. refers to publicly traded equity securities on the TSX.

Client(s)	Date of communication	Description of investment advice
NH	December 31, 2009	Confirming that the Respondent recommended a public traded equity security at an earlier meeting and that it was currently trading at a higher price from when that recommendation was made
	October 15, 2013	Suggesting a discussion with the client about moving \$400 in cash to a self-directed securities account in order to avoid having to sell stocks
	June 18, 2014	Advising the client to move cash to a high interest account fund within the client's self-directed securities trading account
NH and DH	July 28, 2008	Recommending the clients purchase \$50,000 in shares of a publicly traded Canadian bank and a publicly traded asset management firm
DJ	May 2016	Recommending the client to take profits in existing stocks and to buy shares of 3 publicly traded companies
KJ and DJ	January 26, 2007	Reminding the clients that the Respondent asked DJ to diversify out of stock in a publicly traded company over the last 5 years, and repeating her advice to diversify out of the same publicly traded company into other investments
KO	February 18, 2010	Recommending the client open an equity securities component to his RRSP in order for the client to hold corporate bonds and individual stocks, and providing the client with an application form for a self-directed brokerage account and a limited trading authorization form
PT	August 30, 2011	Discussing with the client that she may want to consider participating in a share purchase program at the client's employer (a publicly traded company), highlighting information about the dividend yield and discount price the client could buy the stock at under the program
PT and CT	March 19, 2008	Advising that the clients have stock options that they could exercise later in the year, and would be worthless if PT did not exercise them before she left the company
	May 27, 2008	Explaining to the client the process of exercising options in a publicly traded company once a certain price was met

15. The Respondent was not registered to provide advice in respect of non-mutual fund securities, and was prohibited from providing investment advice to clients as described above.

Altered Forms

16. In February 2016, the Respondent altered, and used to process transactions, 2 account forms in respect of 3 clients by altering information on the account forms without having the client initial the alterations.

17. The altered account forms consisted of an account change and a Registered Education Savings Plan (“RESP”) application form.

Pre-Signed Account Forms

18. Beginning in March 2011, Queensbury Strategies’ policies and procedures prohibited its Approved Persons from using pre-signed account forms.

19. Between November 2008 and February 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 17 pre-signed account forms in respect of 12 clients.

20. The pre-signed account forms consisted of new account application, RESP application, Tax-Free Savings Account application, Know-Your-Client update, account change, transfer authorization, and pre-authorized/systematic withdrawal instruction forms.

Queensbury Strategies’ Response

21. In December 2016, after a review of the Respondent’s branch, MFDA Sales Compliance Staff alerted Queensbury Strategies that it identified pre-signed account forms and client correspondence indicating that the Respondent was providing advice to clients on non-mutual fund securities.

22. As part of its investigation, Queensbury Strategies sent letters to all of the clients who are currently serviced by the Respondent to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns.

23. On August 15, 2017, Queensbury Strategies placed the Respondent under strict supervision for one year and withheld 20% of her commissions. By the end of August 2018, in respect of her strict supervision, the Respondent has paid \$33,596.87 in commissions to Queensbury Strategies.

Additional Factors

24. The Respondent states that she was not remunerated for the investment advice provided outside of her registration status, as described above in paragraphs 12 to 14.

25. With respect to the Respondent's use of altered and pre-signed forms, there is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above in paragraphs 16 to 20, other than the commissions or fees she would ordinarily be entitled to had the transactions been completed in the proper manner.

26. There is no evidence of client loss or lack of authorization.

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

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

IV. ADDITIONAL TERMS OF SETTLEMENT

29. 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.

30. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the "Settlement Hearing"). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

31. 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.

32. 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 contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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.

33. 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.

34. 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.

35. 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 6th day of September, 2018.

“Adrienne Elizabeth Benoit Simmons”

Adrienne Elizabeth Benoit Simmons

“SG”

Witness – Signature

SG

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.**



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**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: Adrienne Elizabeth Benoit Simmons

ORDER

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 Adrienne Elizabeth Benoit Simmons (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 February 2006 and May 2016, the Respondent engaged in securities related business beyond the terms of her registration as a mutual fund salesperson by providing investment advice to at least 11 clients in respect of non-mutual fund securities, contrary to the Member’s policies and procedures, and MFDA Rules 1.1.1, 1.1.2, 1.1.5(a) and 2.1.1;

- b) in February 2016, the Respondent altered, and used to process transactions, 2 account forms in respect of 3 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- c) between November 2008 and February 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 17 pre-signed account forms in respect of 12 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 be suspended for a period of 1 month from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA commencing from the date of the Hearing Panel's final Order herein, pursuant to s. 24.1.1(c) of MFDA By-law No.1;
2. the Respondent shall pay a fine in the amount of \$15,000 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
3. the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
4. the Respondent shall in the future comply with MFDA Rules 1.1.1, and 2.1.1; and
5. 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]