



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: Melissa Marie Smith

Heard: October 20, 2016, in Halifax, Nova Scotia

Reasons for Decision: November 8, 2016

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

George W. MacDonald, Q.C.

Susan Nixon

Darrell Bing

Chair

Industry Representative

Industry Representative

Appearances:

Paul Blasiak

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Counsel for the Mutual Fund Dealers
Association of Canada

Suzanne Kittell

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Counsel for the Respondent

1. As a result of a settlement agreement dated June 13, 2016 (the “Settlement Agreement”) between the Mutual Fund Dealers Association of Canada (the “MFDA”) and Melissa Marie Smith (the “Respondent”), a copy of which is available on the MFDA website and is not set out in detail here, a Settlement Hearing was conducted on October 20, 2016 in Halifax, Nova Scotia. The Hearing Panel heard oral submissions from MFDA Counsel, and received written submissions on behalf of the MFDA dated October 17, 2016. Respondent’s Counsel advised the Hearing Panel that she agreed with the submissions of MFDA staff and the Terms of Settlement set out therein.

2. The actions of the Respondent alleged by the MFDA and admitted by the Respondent are set out in the Settlement Agreement and are as follows:

1. Between March 2014 and February 2015, the Respondent altered and, in 17 instances, used to process transactions, 20 account forms in respect of two (2) clients.
2. The forms consisted of 14 Transfer Authorization Forms, three (3) Know-Your-Client Forms, two (2) Investment Application Forms and one (1) Limited Trade Authorization Form.
3. With regard to 15 of the 20 account forms, the Respondent used photocopies of previously signed client signature pages from other account forms to complete the form. The Respondent submitted to Sun Life at least 12 of these account forms for processing.
4. With regard to the remaining five (5) account forms, the Respondent altered previously used account forms and re-submitted them to Sun Life to process additional transactions. In particular, the Respondent altered account numbers, client signature dates, know-your-client information and/or investment instructions.

3. The violations of the By-laws, Rules, or Policies of MFDA alleged by the MFDA and admitted by the Respondent are set out in the Settlement Agreement as follows:

1. between March 2014 and February 2015, the Respondent altered and, in 17 instances, used to process transactions, 20 account forms in respect of two (2) clients by using photocopies of previously signed signature pages from other forms or altering previously used account forms, contrary to MFDA Rule 2.1.1; and
2. between March 2014 and October 2014, the Respondent obtained and possessed one (1) pre-signed account form in respect of one (1) client, contrary to MFDA Rule 2.1.1.

4. The MFDA and the Respondent agreed to the following Terms of Settlement:

1. 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, payable in two installments as follows:
 - i) the first installment of \$5,000 shall be paid on or before the first business day of the six (6) months that follow the date of acceptance of the Settlement Agreement by the Hearing Panel;
 - ii) the second installment of \$5,000 shall be paid on or before the first business day of the 12 months that follow the date of acceptance of the Settlement Agreement by the Hearing Panel;
2. the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1, payable immediately upon acceptance of the Settlement Agreement by the Hearing Panel;

3. if the Respondent fails to make any of the payments described in subparagraph (a) when the payments become due, then without further notice to the Respondent, the Respondent shall summarily be suspended from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member, until the full amount of the fine has been paid;
 4. the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 5. the Respondent will attend in person, on the date set for the Settlement Hearing.
5. The following salient facts are agreed to by MFDA and the Respondent:
1. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”), a Member of the MFDA, in Nova Scotia since March 2008, and Alberta since June 2013.
 2. The Respondent was also previously registered with Sun Life in Alberta from March 2005 to December 2009.
 3. At all material times, the Respondent conducted business in the St. Andrews, Nova Scotia area.
 4. Sun Life detected the conduct that is the subject of this Settlement Agreement during a compliance audit conducted on October 27, 2014, and a further follow-up audit on February 19 and March 10, 2015. This audit included a review of all client files maintained by the Respondent.
 5. As part of its investigation, Sun Life sent letters to all clients serviced by the Respondent to determine whether the Respondent had engaged in any

unauthorized trading activity in the clients' accounts. None of the clients reported any concerns to Sun Life.

6. On August 13, 2015, Sun Life sent a warning letter to the Respondent regarding the conduct described above and placed the Respondent on close supervision for a period of 12 months. No further concerns have arisen as a result.
7. The Respondent states that the clients had authorized all of the transactions referenced in this Settlement Agreement.
8. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above, beyond the commissions or fees she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
9. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

Acceptance of Settlement Agreement

6. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.
7. We found that the proposed penalty was reasonable and proportionate in the circumstances of this case. It provides specific deterrence to the Respondent and general deterrence to others in the industry.
8. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for her misconduct, recognizes its seriousness, and has exhibited remorse.
9. The penalty imposed is not out of line with recent cases cited by counsel and is consistent with the MFDA Penalty Guidelines. At the Settlement Hearing Staff presented a proposed Order.

The provisions of paragraph 2, which normally would reflect precisely what was contained in the Settlement Agreement relating to the penalty the MFDA and the Respondent agreed to accept, made it clear that the agreed amount of fine was to be paid in two installments as follows:

- a) The first installment of \$5,000 shall be paid on or before April 20, 2017;
- b) The second installment of \$5,000 shall be paid on or before October 20, 2017.

Counsel for the Respondent agreed to the revised penalty provision set out in the proposed Order.

10. Hearing Panels should not interfere lightly in negotiated settlements and should not reject a Settlement Agreement unless it considers the proposed penalty clearly falls outside a reasonable range. The penalty agreed to in this case does fall within a reasonable range.

11. For the above reasons we accept the Settlement Agreement dated July 18, 2016, as amended by the terms of the Order and the Order was signed.

DATED this 8th day of November, 2016.

“George W. MacDonald”

George W. MacDonald, QC
Chair

“Susan Nixon”

Susan Nixon
Industry Representative

“Darrell Bing”

Darrell Bing
Industry Representative