



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: Benjamin Stewart

Heard: March 10, 2021 by electronic hearing in Toronto, Ontario

Decision: March 10, 2021

Reasons for Decision: April 15, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Emily Cole
Michael Coulter
Brigitte Geisler

Chair
Industry Representative
Industry Representative

Appearances:

David Barbaree)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Sarah Erskine)	Counsel for the Respondent
)	
)	
Benjamin Stewart)	Respondent
)	
)	

I. INTRODUCTION

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement dated March 3, 2021 (“Settlement Agreement”) between staff of the MFDA (“Staff”) and Benjamin Stewart (“Respondent”).

2. After reviewing the Settlement Agreement and the material filed by Staff and hearing the submissions of counsel for Staff and counsel for the Respondent the Hearing Panel accepted the Settlement Agreement attached and signed an order reflecting our approval. These are the reasons for our decision.

II. CONTRAVENTIONS

3. Based on the Agreed Facts set out below the Respondent admits that on January 22, 2019, he completed two account forms without communicating with the client about the forms, signed the client’s signature on the account forms, and submitted the forms to the Member for processing, contrary to MFDA Rule 2.1.1.

III. PROPOSED SANCTIONS

4. Staff and the Respondent agree and consent to the following proposed sanctions:

- a) the Respondent shall pay a fine in the amount of \$6,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 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 section 24.2 of MFDA By-law No.1;
- c) the Respondent shall be suspended from acting as a branch manager or in any other supervisory capacity for a period of 2 months, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- d) the Respondent shall successfully complete the branch manager’s course offered by either the Canadian Securities Institute or the Investment Funds Institute of Canada prior to acting as a branch manager in the future, pursuant to section 24.1.1(f) of MFDA By-law No. 1;

- e) the Respondent shall in the future comply with MFDA Rule 2.1.1, 1.1.2, and 2.5.1; and
- f) the Respondent will attend in person or by videoconference on the date set for the Settlement Hearing.

IV. AGREED FACTS

Registration History

- 5. Commencing January 2004, the Respondent was registered in the securities industry.
- 6. Since April 13, 2011 in Ontario, and since November 18, 2019 in Quebec, the Respondent has been registered as a dealing representative with Royal Mutual Funds Inc. (the “Member”), a Member of the MFDA.
- 7. On November 19, 2014, the Member designated the Respondent as a branch manager.
- 8. At all material times, the Respondent conducted business at a branch located in Cornwall, Ontario (the “Branch”).

The Respondent completed account forms without communicating with the client and signed the client’s signature

- 9. At all material times, the Member’s policies and procedures prohibited its Approved Persons from signing or initialing documentation for or on behalf of clients.
- 10. On January 9, 2019, the Respondent met with client SH at the Branch. At the time, client SH held a registered retirement savings plan (the “RRSP”) and a tax-free savings account (“TFSA”) with the Member.
- 11. During the meeting, client SH instructed the Respondent to transfer his monies from his Member accounts to cash or a guaranteed investment certificate (“GIC”). As client SH’s Member accounts could not hold cash or GICs, client SH’s monies had to be transferred to a retail account with the Member’s affiliate bank (the “Bank”). The Respondent completed documentation with client SH to open an RRSP and TFSA account with the Bank and transfer client SH’s monies from the Member to the Bank.

12. Between January 14 and 18, 2019, the Respondent was away from the office for the birth of his child. During this period, client SH contacted representatives of the Member at the Branch to inquire about the transfer of his accounts and expressed concern about the delay.

13. On January 21, 2019, the Member informed the Respondent that the transfer of client SH's monies from the Member to the Bank could not proceed until a mutual fund reclassification form was completed for both Member accounts. This form required transfer instructions, including information such as account type and account number, and required client SH's signature.

14. On January 22, 2019, without communicating with client SH, the Respondent completed the mutual fund reclassification forms for both Member accounts, signed client SH's signature on the forms, and submitted them to the Member for processing.

15. The Respondent states that he completed the reclassification forms and signed client SH's signature to process the transactions without any further delay. The Respondent recognizes that he ought to have contacted the client to complete the forms and obtained the client signature.

16. Commencing January 25, 2019, client SH made inquiries of a representative of the Member at the Branch regarding the delay in transferring his monies to the Bank and advised that he did not meet with the Respondent on January 22, 2019 and that he did not sign any forms on that date.

17. By February 5, 2019, the monies held in client SH's TFSA were transferred from the Member to the Bank.

18. The Member paid client SH \$180 in compensation for the delay in transferring his monies to the Bank.

Member Investigation

19. Commencing in February 2019, the Member began an investigation into the Respondent's conduct. The Member confirmed that client SH did not sign the client account forms described above at paragraphs 14 and 15.

20. On March 28, 2019, the Member issued a written warning to the Respondent. The Member required the Respondent complete a Code of Conduct action plan and put the Respondent on heightened supervision. Further, the Member imposed a reduction of compensation on the Respondent in the amount of \$8,250.

Additional Factors

21. There is no evidence that the Respondent received any financial benefit from the conduct set out above.
22. There is evidence client SH authorized the underlying transactions.
23. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
24. 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.

V. ANALYSIS

a) Jurisdiction of the Hearing Panel

25. A Hearing Panel is authorized to either accept or reject a settlement agreement.

Section 24.4.3 of MFDA By-law No. 1

26. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing Panel “will tend not to alter a penalty that it considers to be within a reasonable range, considering 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.”

Milewski (Re), [1999] I.D.A.C.D. No. 17.

Sterling Mutuals Inc. (Re), 2008 LNCMFDA 16 at para 37

27. Settlements are to be encouraged. They make a significant contribution to meeting the MFDA’s primary objective of investor protection by providing a practical and efficient way of addressing misconduct in the securities industry. Where the Respondent takes responsibility and admits his misconduct and the parties can agree upon appropriate sanctions, settlements can save time and conserve the regulator’s limited resources. Settlements also provide certainty and are likely to result in greater compliance with the sanctions imposed.

British Columbia (Securities Commission v. Seifert), [2006] B.C.J. No 225 at paras. 48-49 (S.C.), aff’d [2007] B.C.J. No 2186 at para. 31 (C.A.)

b) The Seriousness of the Misconduct

Signing a client's signature is a serious breach of the standard of conduct expected of an MFDA Approved Person.

28. The Respondent admitted to completing two account forms without communicating with the client about the forms, signing the client's signature on the account forms, and submitting the forms to the member for processing, contrary to MFDA Rule 2.1.1.

Stemshorn-Russel (Re), supra, at paras. 20-22

Muhima (Re), CanLII 11901 (CA MFDAC), at para. 9

29. The Respondent's misconduct was also contrary to the member's policies and procedures which prohibited its approved persons from signing or initialling documentation for or on behalf of clients.

30. Signing a client signature adversely affects the integrity and reliability of account documents, destroys the audit trail, has a negative impact on member complaint handling, and creates the potential for misuse in the form of unauthorized trading, fraud, and misappropriation.

Barnai (Re), 2014 CanLII 85682 (CA MFDAC), at para. 6

31. The Respondent signed these forms after the MFDA had repeatedly warned approved persons against misconduct.

MFDA Staff Notice MSN-0066, Signature Falsification, dated October 31, 2007
(Updated January 26, 2017)

MFDA Bulletin #0661-E, Signature Falsification, dated October 2, 2015

32. The Respondent had been designated as a branch manager for nearly 5 years before his misconduct. The branch manager designation reflects additional specialized education, training, and expertise. It is a badge of the industry's confidence in an individual's ability to apply that knowledge and expertise not only in the conduct of their own business but also to supervise others. As such, a branch manager is held to a higher standard regardless of whether he is acting as a branch manager at the time of the misconduct. In this case, the fact that the Respondent was not acting as a branch manager at the time he breached the MFDA rules is irrelevant. As the Hearing Panel wrote in Dziadecki, with the Branch Manager designation the Respondent ought to have known better.

Mitigating Factors

33. We considered the following mitigating factors:

- a) There was no client/investor harm;
- b) The Respondent did not receive any financial benefit from his misconduct;
- c) The client authorized the underlying transactions;
- d) There were extenuating circumstances. The Respondent was absent from the office due to the birth of his child. The Respondent's actions were motivated by his desire to help his client;
- e) The Respondent has not previously been the subject of the MFDA disciplinary proceedings;
- f) By entering into the Settlement Agreement, the Respondent has saved the MFDA time, resources and expenses associated with conducting a full hearing on the allegations; and
- g) Member discipline discussed below.

34. MFDA Sanctions guidelines provide that sanctions imposed on the Respondent for the same misconduct by the member or other regulator may be considered a mitigating factor.

MFDA Sanction Guidelines, November 15, 2018, para 8

35. The Respondent was disciplined by the Member as follows:

- a) The Respondent received a written warning;
- b) The Respondent was also required to complete a Code of Conduct action plan including being under heightened supervision; and
- c) The Respondent's compensation was reduced by the amount of \$8250.00.

36. The totality of the discipline imposed by the member including non-monetary and monetary measures is a mitigating factor which forms part of the factual matrix. We agree with Staff that any monetary penalties imposed by the Member, while mitigating do not reduce dollar for dollar the fine which the MFDA determines is fair and appropriate.

c) Costs

37. The costs award is appropriate and consistent with previous MFDA decisions.

VI. CONCLUSION

38. We are satisfied that the proposed sanctions, including the two-month suspension from acting as a branch manager or in any other supervisory capacity, the \$6000 fine and \$2,500 in costs will serve as a specific deterrence to the Respondent and general deterrence to others in the industry who may contemplate engaging in similar misconduct in the future.

39. Staff provided six MFDA decisions which addressed similar misconduct. We reviewed the precedents provided and considered the factors discussed above and concluded the proposed sanctions fall within a reasonable range of appropriateness.

40. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against the Respondent.

DATED this 15th day of April, 2021.

“Emily Cole”

Emily Cole
Chair

“Michael Coulter”

Michael Coulter
Industry Representative

“Brigitte Geisler”

Brigitte Geisler
Industry Representative

DM 810205