



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: James Morson Stoddard

Heard: April 16, 2018 in Toronto, Ontario

Decision: April 16, 2018

Reasons for Decision: May 23, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth
Linda J. Anderson
Guenther W.K. Kleberg

Chair
Industry Representative
Industry Representative

Appearances:

David Babin)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Natalia Vandervoort)	Counsel for the Respondent
)	
)	
James Morson Stoddard)	Respondent, in Person
)	

Background

1. By Notice of Settlement Hearing dated March 12, 2018, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Panel should accept a settlement agreement dated March 12, 2018, (“Settlement Agreement”) entered into by the Staff of the MFDA (“Staff”) and James Morson Stoddard (the “Respondent”), assisted by his counsel.

2. At the outset of the proceeding, the Panel considered a joint motion by Staff and the Respondent to move the proceedings “in camera”. The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Panel’s reasons for doing so.

The Contravention

3. In the Settlement Agreement, the Respondent admits that between July 28, 2011 and August 5, 2016, he obtained, possessed and in some instances used to process transactions, 80 pre-signed account forms in relation to 25 clients, contrary to MFDA Rule 2.1.1.

The Facts

4. In the Settlement Agreement, Staff of the MFDA and the Respondent agreed to a series of facts, which are set out in Part III of the said Agreement. The Settlement Agreement is attached as Appendix “A” to these Reasons.

5. As set out in paragraphs 7 to 10 of the Settlement Agreement, between 1998 and February 24, 2017, the Respondent was registered in Ontario as a mutual fund sales person (now known as a dealing representative). At all material times, the Respondent conducted business in the Markham, Ontario area. The Respondent’s Registration as a dealing representative, was terminated

on February 24, 2017 as a result of the misconduct set out in the Settlement Agreement. The Respondent is not currently registered in the securities industry in any capacity.

Discussion

6. The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

- a) The facts admitted by the Respondent constitute misconduct in contravention of the By-law, MFDA Rules or policies, or provincial securities legislation; and
- b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

7. The Panel accepted that the role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *Milewski (Re)*:

“We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel “will tend not to alter a penalty that it considers to be within a reasonable range, taking into account 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.” [Emphasis added].

Sterling Mutuals Inc. (Re), MFDA File No. 201619, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

8. The Panel was aware that the MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years.

MFDA Staff Notice #MSN-0035 dated December 10, 2004

MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017)

MFDA Bulletin #0661-E dated October 2, 2015

9. Hearing Panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

Bansal (Re), MFDA File No. 201664, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated November 23, 2016.

Balani (Re), MFDA File No. 201402, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 15, 2015

10. The Panel considered in detail the agreed facts set out in the Settlement Agreement, and having done so, concluded that the allegation admitted by the Respondent had been proven and constituted misconduct in contravention of the By-laws, MFDA Rules or policies, or provincial securities legislation.

11. The Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Panel considered the submissions of Staff and the Respondent's counsel, the MFDA Penalty Guidelines and the substantial case law to which it was referred.

12. The Panel accepted counsel's joint submission that the primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is protection of the investor. In addition to protection of the investor, the goals of securities regulation, include fostering public confidence in the capital markets and the securities industry.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

13. The Hearing Panel was aware that Panels in the past have frequently considered the following factors when determining whether a penalty is appropriate:

- a) The seriousness of the allegations proved against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience and level of activity in the capital markets;
- d) Whether the Respondent recognizes the seriousness of the improper activity;
- e) The harm suffered by investors as a result of the Respondent's activity;
- f) The benefits received by the Respondent as a result of the improper activity;
- g) The Risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j) The need to alert others to the consequences of inappropriate activity to those who are permitted to participate in the capital markets; and
- k) Previous decisions made in similar circumstances.

Breckenridge, supra.

14. When applying the above factors, the Panel was mindful that:

- a) Using pre-signed account forms is a serious breach of MFDA Rule 2.1.1;

Balani (Re), supra

- b) The Respondent had not been the subject of previous MFDA discipline proceedings;
- c) There was no evidence of client loss nor evidence that the Respondent received any financial benefit from engaging in the misconduct described;
- d) There had been no client complaints with respect to the misconduct; and
- e) The Respondent had cooperated fully with Staff during the course of the investigation.

Result

15. For all the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate and should be accepted. Accordingly, the following penalties were imposed upon the Respondent:

- a) The Respondent shall pay a fine in the amount of \$10,000 pursuant to section 24.1.1(b) of By-law No. 1;
- b) The Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1 upon acceptance of the Settlement Agreement;
- c) The payment by the Respondent of the fine and costs described above in paragraphs (a) and (b) shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$2,500 (costs) shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$1,666.67 (fine) shall be paid on or before the last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - iii. \$1,666.67 (fine) shall be paid on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - iv. \$1,667.67 (fine) shall be paid on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - v. \$1,667.67 (fine) shall be paid on or before the last business day of the fourth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - vi. \$1,667.67 (fine) shall be paid on or before the last business day of the fifth month following the acceptance of the Settlement Agreement by the Hearing Panel;

- vii. \$1,667.67 (fine) shall be paid on or before the last business day of the sixth month following the acceptance of the Settlement Agreement by the Hearing Panel.
- d) If the Respondent fails to make any of the payments described above in subparagraph (c) then,
 - i. Any outstanding balance of the costs owed by the Respondent shall immediately become due and payable to the MFDA; and
 - ii. The Respondent shall continue to 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 costs owed by the Respondent is paid to the MFDA, pursuant to section 24.3.13 of MFDA By-law No. 1.
- e) The Respondent shall in the future comply with MFDA Rules 2.3.1 and 2.1.1; and
- f) 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 23rd day of May, 2018.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Linda J. Anderson”

Linda J. Anderson
Industry Representative

“Guenther W.K. Kleberg”

Guenther W.K. Kleberg
Industry Representative

DM 614158

Appendix "A"

Settlement Agreement

File No. 201837



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: James Morson Stoddard

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, James Stoddard (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 that:

- i) between July 28, 2011 and August 5, 2016, he obtained, possessed, and in some instances used to process transactions, 80 pre-signed account forms in relation to 25 clients, contrary to MFDA Rule 2.1.1.

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

- i) the Respondent shall pay a fine in the amount of \$10,000 pursuant to section 24.1.1(b) of By-law No. 1;
- ii) the Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;
- iii) the payment by the Respondent of the fine and costs described above in subparagraphs 5(i) and (ii) shall be made to and received by MFDA Staff in certified funds as follows:
 - a) \$2,500 (costs) shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
 - b) \$1,666.67 (fine) shall be paid on or before the last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - c) \$1,666.67 (fine) shall be paid on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - d) \$1,666.67 (fine) shall be paid on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - e) \$1,666.67 (fine) shall be paid on or before the last business day of the fourth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - f) \$1,666.67 (fine) shall be paid on or before the last business day of the fifth month following the acceptance of the Settlement Agreement by the Hearing Panel;

- g) \$1,666.67 (fine) shall be paid on or before the last business day of the sixth month following the acceptance of the Settlement Agreement by the Hearing Panel;
- iv) if the Respondent fails to make any of the payments described above in subparagraph 5(iii) then:
 - a) any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA; and
 - b) the Respondent shall continue to 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 section 24.3.13(c) of MFDA By-law No. 1;
- v) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- vi) the Respondent will attend in person at 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. The Respondent was registered in the mutual fund industry commencing in or about 1998.
- 8. From October 1, 2007 to February 24, 2017, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Peak Investment Services Inc. (“Peak”), a Member of the MFDA.
- 9. At all material times, the Respondent conducted business in the Markham, Ontario area.

10. Peak terminated the Respondent's registration on February 24, 2017 as a result of the misconduct set out in this Settlement Agreement. The Respondent is not currently registered in the securities industry in any capacity.

Pre-Signed Account Forms

11. At all material times, Peak's policies and procedures prohibited its Approved Persons from using pre-signed account forms.

12. MFDA Compliance Staff detected the pre-signed forms that are the subject of this Settlement Agreement during a compliance review of the Respondent's branch location conducted in 2016.

13. Between July 28, 2011 and August 5, 2016, the Respondent obtained, possessed and in some instances used to process transactions, 80 pre-signed account forms in relation to 25 clients.

14. The pre-signed account forms included order forms, Registered Education Savings Plan withdrawal forms and deregistration forms.

Additional Factors

15. The Respondent states that he engaged in the conduct described in this Settlement Agreement for the purposes of client convenience.

16. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

17. There is no evidence of client loss in this matter or that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner.

18. There have been no client complaints in relation to the conduct described in this Settlement Agreement, and no evidence of unauthorized trading undertaken by the Respondent.

19. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to this settlement, has avoided the necessity of a full hearing on the merits.

IV. ADDITIONAL TERMS OF SETTLEMENT

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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 12th day of March, 2018.

“James Stoddard”

James Stoddard

“GB”

Witness – Signature

GB

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement



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**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: James Morson Stoddard

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 James Stoddard (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 between July 28, 2011 and August 5, 2016, the Respondent obtained, possessed, and in some instances used to process transactions, 80 pre-signed account forms in relation to 25 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 \$10,000 pursuant to section 24.1.1(b) of By-law No. 1;
2. the Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;
3. the payment by the Respondent of the fine and costs described above in paragraphs 1 and 2 shall be made to and received by MFDA Staff in certified funds as follows:
 - i) \$2,500 (costs) shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii) \$1,666.67 (fine) on or before [date];
 - iii) \$1,666.67 (fine) on or before [date];
 - iv) \$1,666.67 (fine) on or before [date];
 - v) \$1,666.67 (fine) on or before [date];
 - vi) \$1,666.67 (fine) on or before [date];
 - vii) \$1,666.67 (fine) on or before [date];
4. if the Respondent fails to make any of the payments described above in paragraph 3 then:
 - i) any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA; and
 - ii) the Respondent shall continue to 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 section 24.3.13(c) of MFDA By-law No.1;
5. the Respondent shall in the future comply with MFDA Rule 2.1.1; and
6. 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]