



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: Mervyn Sutton and Rachel Sutton Akers

Heard: December 10, 2015 in Saskatoon, Saskatchewan
Reasons for Decision: January 19, 2016

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, Q.C.	Chair
Elaine Bradley	Industry Representative
Richard Sydenham	Industry Representative

Appearances:

David Babin)	For the Mutual Fund Dealers Association of
)	Canada
)	
Mervyn Sutton)	Self-represented, appearing in person
)	
Rachel Sutton Akers)	
)	

Introduction

1. On November 17th, 2015 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 of the MFDA in respect of Mervyn Sutton ("Sutton") and Rachel Sutton Akers, ("Sutton Akers") collectively, (the "Respondents").

2. The Respondents and Staff of the MFDA ("Staff") propose to enter into a settlement agreement dated December 2, 2015 (the "Settlement Agreement"), pursuant to which the Respondents shall be disciplined pursuant to ss. 20 and 24.1.1 of By-law No. 1 of the MFDA. The Settlement Agreement provides that the Respondents shall:

- (a) pay a fine of \$10,000 pursuant to section 24.1.1. (b) of By-law No. 1,
- (b) pay costs of \$2,500 pursuant to section 24.2 of By-Law No. 1,
- (c) in future comply with MFDA Rule 2.1.1, and
- (d) attend in person on the date set for the Settlement Hearing.

3. On December 10, 2015, after hearing representations by Staff and by the Respondents, this Hearing Panel approved the Settlement Agreement, with written reasons to follow, and agreed to sign an Order to that effect. The written reasons for such approval are set out below.

AGREED FACTS

Registration

4. Sutton has been registered in the mutual fund industry since October 1, 2001.

5. Since September 1, 2006, Sutton has been registered in Saskatchewan as a mutual fund salesperson (now known as a dealing representative) with FundEX Investments Inc. ("FundEX"), a Member of the MFDA.

6. Since September 1, 2006, Sutton Akers has been registered in Saskatchewan as a mutual fund salesperson with FundEX.

7. Sutton is Sutton Akers' father and he and she jointly serviced the same client base.

8. At all material times, the Respondents conducted business at a FundEX branch located in Prince Albert, Saskatchewan.

Blank and Partially Completed Pre-Signed Account Forms

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

10. Between February 6, 2012 and June 23, 2014, the Respondents obtained, maintained and used to process transactions, 21 pre-signed account forms in respect of 10 client accounts.

11. The pre-signed account forms were comprised of:

- (a) Two Deregistration / Withdrawal Request Forms;
- (b) 11 Mutual Fund Trade Tickets;
- (c) One New Client Account Form;
- (d) Five Order Entry Forms; and
- (e) Two Systematic Instruction Forms.

12. Between February 6, 2012 and June 23, 2014, the Respondents also obtained and maintained 14 blank pre-signed account forms in respect of 11 client accounts.

13. The blank pre-signed account forms were comprised of:

- (a) 12 Mutual Fund Trade Tickets; and
- (b) Two Order Entry Forms.

Member Response

14. In June 2014, FundEX reviewed all of the client files maintained by the Respondents and did not detect any further use of pre-signed accounts forms beyond the activities described above.

15. On July 30, 2014, FundEX issued a letter of reprimand to the Respondents and placed them under strict supervision. During the period of strict supervision, all of the Respondents' orders were subject to review and approval by their regional branch manager. FundEX also charged the Respondents \$500 per month (a total of \$2,000) in respect of the strict supervision. The period of strict supervision concluded for the Respondents on November 20, 2014.

16. On August 4, 2014, FundEX sent a letter to clients serviced by the Respondents, which included a copy of a three-year summary of account transactions, to determine whether the Respondents had engaged in any unauthorized trading in client accounts. None of the clients reported any concerns to FundEX.

Additional Factors

17. The Respondents have no prior disciplinary history with the MFDA.

18. There is no evidence of misappropriation, unauthorized trading, or client harm in this matter. All transactions processed using pre-signed forms were processed with the knowledge and approval of the clients, and gave effect to the clients' instructions.

19. There is no evidence that the Respondents received any financial benefit from engaging in the misconduct.

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

21. The Respondents have expressed remorse for their misconduct.

Acceptance of the Settlement Agreement

22. This Panel is mindful of the comments about the role of a Hearing Panel at a settlement hearing stated in *Sterling Mutuals Inc. (Re)* [2008] File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at p 37, citing the I.D.A. Ontario District Council in *Milewski (Re)* that:

“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.”

23. This Panel is similarly mindful of the comments about the benefits of settlements aptly noted by the British Columbia Court of Appeal in *British Columbia (Securities Commission) v. Seifert*, [2007] B.C.J. No. 2186 in referencing passages from the Supreme Court of Canada in *R. v. 974649 Ontario Inc.*, 2001 SCC 81, [2001] 3 S.C.R. 575, particularly the following at paragraph 49:

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters in dispute, and are therefore to be resolved by way of a hearing.”

24. This Panel has considered the following factors as relevant and aggravating:

(a) Nature of the Misconduct - Pre-signed forms

The Respondents obtained and used 35 blank or partially completed pre-signed forms or photocopies of partially complete pre-signed account forms in respect of 21 client accounts. This Panel considers the amounts of forms and clients to be more than trivial numbers.

(b) Experience in the Securities Industry

The Respondents Sutton and Sutton Akers have worked in the securities industry as mutual fund sales persons (now mutual fund dealing representatives) since October 1, 2001 and September 1, 2006 respectively. This Panel considers these time periods indicate the Respondents knew, or should have known before the time period in question, that the practice under investigation was prohibited by the Rules of the MFDA.

25. This Panel considers the following factors as mitigating:

(a) Past Conduct

The Respondents have never previously been subjects of an MFDA disciplinary proceeding.

(b) Recognition of Seriousness of the Misconduct

The Respondents have cooperated with the investigation by MFDA Staff, have accepted responsibility for their misconduct by entering into the Settlement Agreement and spared the MFDA the time and expense of a full contested hearing.

(c) Client Harm and Benefits to Respondent

Staff found no evidence of unauthorized trades, client losses or client complaints, or that the Respondents received a financial or other benefit through their conduct.

26. This Panel has also considered the following additional factors as relevant:

(a) Penalty Guidelines

The Hearing Panel considered the MFDA Penalty Guidelines for breach of the Standard of Conduct Rule 2.1.1, while noting that they are neither mandatory nor binding. This Panel notes that the parties have jointly proposed that each of the Respondents be assessed an individual fine of \$5,000, and that a total fine of \$10,000 for the Respondents is in line with the recommended penalty set out in the MFDA Penalty Guidelines.

(b) Deterrence

A fine in line with that recommended by the Penalty Guidelines for breach of the standard of conduct of Approved Persons and an order for costs is necessary to achieve both specific and general deterrence, to deter the Respondents from repetition of such conduct and to deter others in the capital market from engaging in similar activity. It further demonstrates that the Respondents' misconduct in all of the circumstances is serious and has significant consequences.

(c) Previous Decisions in Similar Cases

The recent decisions of *Kahlon (Re)*, MFDA File No. 201438 dated March 4, 2015, *Kujala (Re)*, MFDA File No. 201423 dated June 13, 2015, *McKale (Re)*, MFDA File No. 201333 dated January 16, 2014, *Byce (Re)*, MFDA File No. 201311 dated September 4, 2013 and *Golden (Re)* MFDA File No. 201218 dated April 26, 2013 all imposed fines and costs awards in similar amounts to the fine and costs proposed in the Settlement Agreement here.

27. In conclusion, based on consideration of the above factors, this Hearing Panel is satisfied that the Settlement Agreement is in the public interest, is reasonable and proportionate, and will foster public confidence in the integrity of the Canadian capital markets and the industry and, accordingly, approves its terms. The Settlement Agreement is attached as Schedule "1" to these reasons for decision.

28. This Panel thanks Mr. Babin for his helpful presentation and the Respondents for providing further particulars of the surrounding circumstances to assist this Panel in its deliberations.

DATED this 19th day of January, 2016.

“Shelley L. Miller”

Shelley L. Miller, Q.C.
Chair

“Elaine Bradley”

Elaine Bradley
Industry Representative

“Richard Sydenham”

Richard Sydenham
Industry Representative

DM 462124 v1



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: Mervyn Sutton and Rachel Sutton Akers

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondents, Mervyn Sutton ("Sutton") and Rachel Sutton Akers ("Akers"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").

2. Staff conducted an investigation of the Respondents' activities which disclosed activity for which the Respondents 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 Respondents jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondents admit that, between February 6, 2012 and June 23, 2014, they obtained, maintained and, in some cases, used to process transactions, 35 blank or partially complete pre-signed account forms in respect of 21 client accounts, contrary to MFDA Rule 2.1.1.

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

- i. the Respondents shall pay a fine in the amount of \$10,000, pursuant to section 24.1.1(b) of By-law No. 1;
- ii. the Respondents shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
- iii. the Respondents shall in the future comply with MFDA Rule 2.1.1; and
- iv. the Respondents will attend in person, on the date set for the Settlement Hearing.

6. Staff and the Respondents 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. Sutton has been registered in the mutual fund industry since October 1, 2001.

8. Since September 1, 2006, Sutton has been registered in Saskatchewan as a mutual fund salesperson (now known as a dealing representative) with FundEX Investments Inc. (“FundEX”), a Member of the MFDA.

9. Since September 1, 2006, Akers has been registered in Saskatchewan as a mutual fund salesperson with FundEX.

10. Sutton is Akers’ father and they jointly serviced the same client base.

11. At all material times, the Respondents conducted business at a FundEX branch located in Prince Albert, Saskatchewan.

Blank and Partially Completed Pre-Signed Account Forms

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

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14. The pre-signed account forms were comprised of:

- i. Two Deregistration / Withdrawal Request Forms;
- ii. 11 Mutual Fund Trade Tickets;
- iii. One New Client Account Form;
- iv. Five Order Entry Forms; and
- v. Two Systematic Instruction Forms.

15. Between February 6, 2012 and June 23, 2014, the Respondents also obtained and maintained 14 blank pre-signed account forms in respect of 11 client accounts.

16. The blank pre-signed account forms were comprised of:

- i. 12 Mutual Fund Trade Tickets; and
- ii. Two Order Entry Forms.

Member Response

17. In June 2014, FundEX reviewed all of the client files maintained by the Respondents and did not detect any further use of pre-signed accounts forms beyond the activities described above.

18. On July 30, 2014, FundEX issued a letter of reprimand to the Respondents and placed them under strict supervision. During the period of strict supervision, all of the Respondents' orders were subject to review and approval by their regional branch manager. FundEX also charged the Respondents \$500 per month (a total of \$2,000) in respect of the strict supervision. The period of strict supervision concluded for the Respondents on November 20, 2014.

19. On August 4, 2014, FundEX sent a letter to clients serviced by the Respondents, which included a copy of a three year summary of account transactions, to determine whether the Respondents had engaged in any unauthorized trading in client accounts. None of the clients reported any concerns to FundEX.

Additional Factors

20. The Respondents have no prior disciplinary history with the MFDA.

21. There is no evidence of misappropriation, unauthorized trading, or client harm in this matter. All transactions processed using pre-signed forms were processed with the knowledge and approval of the client, and gave effect to the client's instructions.

22. There is no evidence that the Respondents received any financial benefit from engaging in the misconduct.

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

24. The Respondents have expressed remorse for their misconduct.

IV. ADDITIONAL TERMS OF SETTLEMENT

25. 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.

26. 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.

27. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondents 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

28. Staff and the Respondents agree that if this Settlement Agreement is accepted by the Hearing Panel:

- i. the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondents in this matter;
- ii. the Respondents waive 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;
- iii. Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondents in respect of the facts and the 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 Respondents from fulfilling any continuing regulatory obligations;
- iv. the Respondents 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

- v. neither Staff nor the Respondents will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondents from making full answer and defence to any civil or other proceedings against the Respondent.

29. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondents 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.

30. Staff and the Respondents 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.

31. 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 11th day of November, 2015.

“Mervyn Sutton”

Mervyn Sutton

“Rachel Sutton Akers”

Rachel Sutton Akers

“H. Springer”

Witness – Signature

“H. Springer”

Witness – Signature

H. Springer

Witness – Print Name

H. Springer

Witness – Print Name

“Shaun Devlin”

Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

Schedule "A"

Order

File No. 201549



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Mervyn Sutton and Rachel Sutton Akers

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 Mervyn Sutton and Rachel Sutton Akers (the "Respondents");;

AND WHEREAS the Respondents entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondents agreed to a proposed settlement of matters for which the Respondents 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 February 6, 2012 and June 23, 2014, the Respondents obtained, maintained and in some cases, used to process transactions, 35 pre-signed blank or partially completed forms in respect of 21 client accounts, contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondents shall pay a fine in the amount of \$10,000, pursuant to section 24.1.1(b) of By-law No. 1;
2. The Respondents shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
3. The Respondents shall in the future comply with MFDA Rule 2.1.1; and
4. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or 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]