



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: Leah Cabuyoc Tacurda

Heard: October 24, 2019 in Calgary, Alberta

Decision: October 24, 2019

Reasons for Decision: December 4, 2019

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC
Kathleen Jost
Richard Bergeron

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Leah Cabuyoc Tacurda)	Respondent, by teleconference
)	
)	

Background

1. On September 12, 2019 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 Leah Cabuyoc Tacurda (the “Respondent”).
2. The Respondent entered into a settlement agreement with MFDA staff, dated September 10, 2019 in which the Respondent agreed to a proposed settlement of matters.
3. On October 24, 2019, after hearing submissions from Enforcement Counsel and the Respondent, this Hearing Panel approved the Settlement Agreement dated September 10, 2019, and signed an Order reflecting that approval. These are our written reasons for doing so.

Agreed Facts

Registration History

4. Between June 2014 and May 2018, the Respondent was registered in Alberta as a dealing representative (formerly known as a mutual fund salesperson) with TD Investment Services Inc. (the “Member”), a Member of the MFDA.
5. Between April 24, 2017 and May 8, 2018, the Member designated the Respondent as an alternate branch manager.
6. On May 8, 2018, the Respondent resigned from the Member, and is not currently registered in the securities industry in any capacity.
7. At all material times, the Respondent carried on business in the Fort McMurray, Alberta area.

The Respondent Signed the Initials of a Client

8. 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.

9. On or about November 25, 2017, client RA signed two Education Savings Plan Account Application forms (the “Application Forms”) in order to open two accounts at the Member. The Respondent then submitted the Application Forms to the Member for processing.

10. Subsequently, the Respondent’s branch manager identified that a section requiring client RA to indicate that she had read and acknowledged portions of the Application Forms entitled “Important Customer Information” (“ICI”) had not been completed.

11. The ICI included information pertaining to the collection and disclosure of client information, account fees and pre-authorized payment terms.

12. The Respondent’s branch manager indicated to the Respondent to have client RA return to the branch, review the ICI and initial the Application Forms.

13. Without contacting client RA in order to review the ICI, the Respondent ticked the boxes indicating that client RA had read and acknowledged the ICI on the Application Forms and signed client RA’s initials on the Application forms. The Respondent then submitted the Application Forms to the Member for processing.

The Member’s Investigation

14. In February 2018, the Member identified the Application Forms that are the subject of this Settlement Agreement, and subsequently reviewed 12 of the 28 client files serviced by the Respondent for the preceding one year period. The Member also contacted the 12 clients to confirm the accuracy of the clients’ KYC information on file, and to confirm that the clients had met with the Respondent in person. The Member did not identify any concerns.

Additional Factors

15. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above, beyond any commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

16. There is no evidence of any client loss.

17. The Respondent states that because of her current financial situation she is unable to pay a larger fine. She acknowledges that were her circumstances different a larger fine would have been appropriate. She provided Staff with evidence to support that statement.

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

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

Analysis

20. The Respondent admits that she did not contact client RA to review and complete the ICI. She further admits that she signed on behalf of the client and submitted the forms for processing.

21. The Settlement Agreement provides that the Respondent shall be prohibited for three months from conducting securities related business with a member of the MFDA, 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, and shall pay a fine of \$1,000 and costs of \$2,500.

22. A hearing panel should not interfere lightly in a negotiated settlement and should not reject a settlement agreement unless it views the proposed distribution is clearly falling outside the range of reasonableness. In our view, this Settlement Agreement advances the public interest and is reasonable and proportionate, having regard to all of the circumstances.

23. We have arrived at this conclusion having considered the following factors:

Nature of the Misconduct: Falsified Client Initials

24. The Respondent signed the initials of one client on two account forms and submitted the forms to the Member for processing. Falsifying client signatures or initials is serious misconduct as it adversely affects the reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.

25. While the Respondent may have judged that this conduct was solely for the benefit of the client and thus minimally harmful, Dealing Representatives must always resist the temptation to violate the rules for the sake of expediency. On the other hand, we accept that the misconduct was an isolated incident.

The Respondent's Past Conduct

26. The Respondent has not previously been disciplined by the MFDA.

The Respondent's Experience in the Securities Industry

27. The Respondent's registration history shows that with her level of experience she ought to have known and respected the MFDA's and the Member's compliance requirements. This is an aggravating factor.

The Respondent's Recognition of the Seriousness of the Misconduct

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

Client Harm and Benefits Received by the Respondent

29. There is no evidence of client harm. There is no evidence that the Respondent received any financial or other benefit through this conduct.

30. We have considered the existing precedents on penalty, as well as the MFDA non-binding Sanctions Guidelines.

31. In summary, we find that the Settlement Agreement is in the public interest. It is reasonable and proportionate, it addresses specific and general deterrence and will foster public confidence in the integrity of the Canadian capital markets, and the industry.

Order

32. For these reasons, the Settlement Agreement was approved.

33. We thank Enforcement Counsel and the Respondent for their cooperation during the hearing.

DATED this 4th day of December, 2019.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“Kathleen Jost”

Kathleen Jost
Industry Representative

“Richard Bergeron”

Richard Bergeron
Industry Representative

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