



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Royston Nigel Kenyetta Thompson

Heard: July 26, 2018 in Toronto, Ontario
Decision: July 26, 2018
Reasons for Decision: September 4, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC	Chair
Guenther W. K. Kleberg	Industry Representative
Edward V. Jackson	Industry Representative

Appearances:

Sarah Glickman)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Royston Nigel Kenyetta Thompson)	Respondent, in person
)	
)	

Agreed Statement of Facts

1. The Hearing Panel accepted an Agreed Statement of Facts dated June 21, 2018 (“ASF”) between the staff of the MFDA and Royston Nigel Kenyetta Thompson (“Respondent”). A copy of the ASF is attached to these Reasons as Appendix “A”.

Finding of Misconduct

2. The contraventions admitted by the Respondent in the ASF constituted a violation of the referenced MFDA Rules as alleged in the Notice of Hearing.

Issue

3. Therefore, the only issue before the panel was: what is the appropriate penalty?

Contraventions

4. The Respondent admitted in the ASF that between July 2014 and April 2016, he obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of 4 clients, contrary to MFDA Rule 2.1.1.

Respondent’s Position

5. The Respondent was registered as an Approved Person in 2004. He advised us that since 2010, he has become rather inactive in the mutual fund sales business and lately has serviced mostly his own account, and those of his closest friend and family.

6. As indicated in the ASF, he earned approximately \$5,000 in total from the mutual fund sales business in the last 3 years in question. He is a full-time police officer with the Regional Municipality of Durham. He does not have a significant book of business.

7. He advised us that he is separated from his wife and that he has a daughter whom he hopes to help with schooling expenses. In his view, a monetary penalty would impact him unduly.

8. He requested a reprimand as an appropriate penalty.

9. When asked how he would view a suspension from acting in any capacity while in the employ of or associated with a Member, he stated that he would like to be able to get back in the securities business but that a suspension was better than a fine for him.

10. He believed that staff's suggestion of a fine in the range of \$6,500 to \$10,000 was inappropriate and unnecessary as a deterrent for him. He was surprised and concerned to hear that staff was also asking for a costs award of \$4,737.50.

11. He believed that he has co-operated with staff in bringing this matter forward. But he believed that having the appropriate penalty determined by the panel was the best way forward.

Staff's Position

12. Staff argued that the misconduct was serious. Some of it occurred after the publication of staff's notice to the industry that it would be seeking increased fines for this type of misconduct.

13. Staff argued that just because no one suffered loss because of the misconduct, this was not a mitigating factor.

14. Staff referred us to 6 similar cases and the MFDA penalty guidelines as well as the staff notice about seeking increased fines.

15. Staff suggested a fine in the range of \$6,500 to \$10,000 and suggested it be towards the top end of the range.

16. Staff submitted that a permanent suspension was unnecessary because the conduct in question was not egregious.

Considerations

17. The Hearing Panel determined that it had to be satisfied regarding two considerations in determining the appropriate penalty. First, the penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Secondly, the penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the penalty.

18. We noted that the fine in every one of the 6 cases submitted to us as precedents by staff was lower than the lowest end of the range suggested to us by staff as appropriate in the case before us. Also, 4 of the 6 cases involved conduct that took place after the publication of staff's notice.

19. In our case the number of infractions was low, there was no harm to clients, and the clients were members of his family or his closest friend. We did not believe that it was necessary to be an effective deterrent in this case to impose a large fine just because some of the misconduct took place after the publication of staff's notice.

20. We accepted the Respondent's view that he had not at the time of the misconduct thought that what he had done was malicious or morally bad or all that wrong, although he now recognizes that it was wrong and serious and must not happen again.

21. The MFDA penalty guidelines suggest a minimum fine of \$5,000 for misconduct like that in question. But they also provide for alternative or additional sanctions including a reprimand or a partial or permanent suspension. The guidelines are not mandatory and indicate that a penalty should be tailored to be appropriate to the specific circumstances of each case.

22. Our mandate is not to punish respondents for their misconduct. It is to protect and to try to prevent unacceptable conduct in the future. Thus the deterrent or preventative effect of a penalty is a paramount consideration in every case.

Suspension

23. A suspension is preventative while it is in effect.

24. A permanent suspension or prohibition is usually reserved for egregious conduct.

25. However, even a temporary suspension can be quite detrimental to an Approved Person's book of business and is not to be imposed lightly.

26. While the Respondent's misconduct was serious, it was not egregious. However, the Respondent does not have a meaningful book of business that would be unduly harmed by a temporary suspension. He would prefer a suspension instead of a monetary sanction.

Decision

27. We had to determine whether the penalty we decided upon would be a deterrent and yet fair and reasonable in the circumstances.

28. A reprimand alone would not provide a sufficient deterrent.

29. This is a rare case where a reprimand, a 6 months suspension in lieu of a monetary penalty, and a costs award would be the appropriate penalty. That would provide an appropriate deterrent to the Respondent and to industry, would be fair and reasonable, and not inconsistent with the approach in other cases.

30. Accordingly, we signed an order to this effect.

Reprimand

31. We reprimanded the Respondent at the hearing.

Costs

32. Staff provided us with a bill of costs amounting to \$4,737.50, which did not include costs for time charged for travel, preparation of the evidence and preparation of staff's legal submission.

33. Nevertheless, we awarded cost for \$2,500 only as this was typical for a case of this nature, usually resulting in resolution by settlement agreement. We believed that the Respondent should not bear increased costs because he chose to contest staff's suggested penalty, as was his right.

DATED this 4th day of September, 2018.

"Paul M. Moore"

Paul M. Moore, QC
Chair

"Guenther W. K. Kleberg"

Guenther W. K. Kleberg
Industry Representative

"Edward V. Jackson"

Edward V. Jackson
Industry Representative

DM 631310

Appendix "A"

Agreed Statement of Facts

File No. 201819



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**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1
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Re: Royston Nigel Kenyetta Thompson

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated January 24, 2018, the Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding against Royston Nigel Kenyetta Thompson ("Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Notice of Hearing set out the following allegation:

Allegation #1: Between July 2014 and April 2016, the Respondent obtained, possessed and, in some instances, used to process transactions, eleven pre-signed account forms in respect of four clients, contrary to MFDA Rule 2.1.1.

II. IN PUBLIC/ IN CAMERA

3. The Respondent and Staff of the MFDA ("Staff") agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

III. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty to impose on the Respondent.

IV. AGREED FACTS

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

7. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

Registration History

8. Since 2004, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with PFSL Investments Canada Inc. (“PFSL”), a Member of the MFDA.

9. The Respondent states that he became registered with PFSL in order to service his own mutual fund investments and those of his close friends.

10. At all material times, the Respondent conducted business in the Whitby, Ontario area.

Allegation #1 – Pre-Signed Account Forms

11. At all material times, PFSL prohibited its Approved Persons, including the Respondent, from using pre-signed account forms.

12. On March 1, 2015 and January 19, 2016, in PFSL’s Annual Attestations for its Dealing Representatives, the Respondent stated that he would not obtain pre-signed account forms.

13. Between July 2014 and April 2016, the Respondent obtained, possessed and, in some instances, used to process transactions, 11 pre-signed account forms in respect of 4 clients.

14. The Respondent states that the 4 clients in whose accounts he obtained the pre-signed account forms are family or close friends.

15. The pre-signed account forms consisted of redemption forms and customer service forms.

Misconduct Admitted

16. By engaging in the conduct described above, the Respondent admits that he failed to observe a high standard of conduct and ethics in the transaction of business and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Additional Factors

17. Between 2014 and 2016, the Respondent earned the following commissions from PFSL:

Year	Commissions	No. of Clients
2014	\$1,231.19	71
2015	\$2,240.98	66
2016	\$1,263.39	65

18. At all material times, the Respondent was also employed as a police officer with the Regional Municipality of Durham.

19. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above other than the commissions or fees he would ordinarily be entitled to had the transactions been completed in the proper manner.

20. There is no evidence of client loss or lack of authorization for the underlying transactions.

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

Execution of Agreed Statement of Facts

22. This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.

23. A facsimile copy of any signature shall be effective as an original signature.

DATED this 21st day of June, 2018.

“Royston Nigel Kenyetta Thompson”

Royston Nigel Kenyetta Thompson

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement