



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: Alan Truong

Heard: April 25, 2019 in Vancouver, British Columbia
Decision: April 25, 2019
Reasons for Decision: June 10, 2019

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Robert G. Ward, QC
Darlene Barker
Holly A. Millar

Chair
Industry Representative
Industry Representative

Appearances:

| | | |
|----------------------|---|---|
| Christopher Corsetti |) | Enforcement Counsel for the Mutual Fund |
| |) | Dealers Association of Canada |
| |) | |
| |) | |
| Alan Truong |) | Respondent, in person |
| |) | |
| |) | |

1. Staff of the MFDA and Alan Truong (the “Respondent”) have entered into a settlement agreement dated January 3, 2019 (the “Settlement Agreement”), subject to approval of a Hearing Panel of the Pacific Regional Council, in which the Respondent admits that,

- a) between January 22, 2016 and June 14, 2016, he signed the signatures of four clients on four account forms and submitted the forms to the Member for processing, contrary to MFDA Rule 2.1.1; and
- b) on March 31, 2016, he misled the Member on its quarterly compliance certificate when he falsely indicated to the Member that he did not sign client signatures, contrary to MFDA Rule 2.1.1.

2. The Respondent agrees that, as a term of the Settlement Agreement:

- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a MFDA Member for a period of six months pursuant to s. 24.1.1(e) of MFDA By-law No. 1 ;
- b) the Respondent shall pay a fine of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA Bylaw No. 1 (Fine); and
- c) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of Bylaw No. 1 (Costs).

Objective of Regulations and Their Enforcement

3. The primary objective of securities regulation is the protection of the investor.¹

Settlement Hearings

4. Settlements allow the parties to address the interests of the Regulator and the Respondent, thereby achieving flexibility while ensuring that the regulatory objective of protecting the public and prohibiting activities that are harmful thereto are enforced.²

¹ *Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (S.C.C.)

² *Regina v 974649 Ontario Inc.* 2001 S.C.C. 81, 2001 3 S.C.R. 575, para. 49.

5. Settlement hearings such as the current one are a part of the process under s. 24.4. Thus, the admissions made and the agreements between the staff of the MFDA and Respondent are subject to review prior to their enforceability. Being a part of the process, the agreements and admissions are, by s. 24.1.1(e) of MFDA By-law No. 1 without prejudice and hearings are normally held, as in the within hearing, in camera.

6. The review Panel is restricted to a consideration of whether or not the settlement is a reasonable one and serves the primary objective of protection of the public; the issue for determination of the Panel is not whether they would have settled the case differently.³

The Conclusion of the Panel

7. The Panel considers that the proposed penalty is reasonable and proportionate and unanimously approves the Settlement Agreement.

Agreed Facts

8. The facts agreed to by the staff of the MFDA and the Respondent are as follows:

Registration History

9. Between September 4, 2015 and September 2, 2016, the Respondent was registered in British Columbia as a Dealing Representative with HSBC Investment Funds (Canada) Inc. (“HSBC”), a Member of the MFDA.

10. On September 2, 2016, HSBC terminated the Respondent's registration as a result of the matters described herein.

11. The Respondent is not currently registered in the securities industry in any capacity.

12. At all material times, the Respondent carried on business in the City of Vancouver, British Columbia area.

³ *Sterling Mutuals Inc.* (re) 2008 MFDA 16, para 37; *Milewski* (re) (1999) 1 D.A.C.D. No. 17, p.11 Ontario District Council; s. 24.1.1(e) of MFDA By-law No. 1.

Respondent Signed Client Signatures

13. At all material times, HSBC prohibited its Approved Persons from signing client signatures.

14. Between January 22, 2016 and June 14, 2016, the Respondent signed the signatures of 4 clients on 4 account forms and submitted the forms to HSBC for processing,

15. The account forms included:

- a) 1 Mutual Fund Information Change Form;
- b) 1 Mutual Fund Redemption Form;
- c) 1 Registered Education Savings Plan Contribution Form; and
- d) 1 Tax Free Savings Account Designation Form.

Misleading HSBC

16. On March 31, 2016, the Respondent misled HSBC on its quarterly compliance certificate when he indicated to the Member that he did not sign client signatures. This was false, since by March 31, 2016, the Respondent had signed 2 client signatures on 2 forms as described above.

HSBC's Response

17. On August 12, 2016, HSBC Bank notified HSBC that the Respondent had admitted to HSBC Bank staff that he signed a customer's signature on an HSBC Bank document.

18. On September 2, 2016, HSBC terminated the Respondent's registration as a result of the events described above.

19. On September 14, 2016, HSBC conducted a review of all of the client files serviced by the Respondent and identified the forms that are the subject of this Settlement Agreement.

20. On October 14, 2016, HSBC contacted the affected clients and arranged to meet with them to correct the deficient forms.

Additional Factors

21. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.
22. The Respondent states that due to his financial circumstances he is unable to contribute any additional amounts towards a fine in this matter. The Respondent acknowledges that absent his limited ability to pay, it would have been appropriate for him to be subject to a penalty that included a greater fine due to the conduct that is the subject of this Settlement Agreement.
23. There is no evidence that:
 - a) the Respondent processed any trades or changes to client information without the authorization of the clients;
 - b) clients suffered any financial loss;
 - c) 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; and
 - d) any clients have complained about the Respondent's conduct.
24. There have been no submissions made on the importance of the issue of falsification of a client's signature, notwithstanding the relative notoriety of the topic; that being the case, it would be inappropriate for the Panel to embark on any further discussion thereof.

The Law

Relevant Rules and provisions are:

25. The relevant rules and provisions in this matter are:
 - a) MFDA Rule 2.1.1 (standard of conduct);
 - b) s. 24.1.1 of MFDA By-law No. 1 (penalties); and
 - c) s. 24.4 of MFDA By-law No. 1 (settlements).

MFDA Rule 2.1.1 - High Standard of Ethics

26. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and Approved Person: deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

27. The decision of the Hearing Panel in the case of *Re Jacobson*, 200712 MFDA, is instructive. In that case, the Hearing Panel stated the following factors are to be taken into account:

- a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- c) whether the settlement agreement addresses the issues of both specific and general deterrence;
- d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) whether the settlement agreement will foster confidence in the regulatory process itself.

28. The case of *Re Headley*, MFDA File No. 200509, pages 25 and 26 is also pertinent. In considering the appropriate penalty, the following factors were stated to be relevant:

- 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 activities;
- 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 activities to those who are permitted to participate in the capital markets; and
- k) previous decisions made in similar circumstances.

29. The MFDA Sanction Guidelines are also relevant, albeit they are not binding and are simply to assist Hearing Panels in considering the appropriate penalties.

Considerations in the Present Case

30. The Panel has taken the following factors into account in reaching its decision:

A. Nature of the Misconduct

31. The Respondent failed to follow policies and procedures and signed the signature of 4 clients then made a false certification on the Member's compliance questionnaire. This conduct falls below the standard of conduct expected of an approved person.

B. Client Harm

32. There is no evidence clients suffered financial losses.

C. Benefits Received by the Respondent

33. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding other than the commissions and fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

D. Respondent's Experience and Level of Activity in the Capital Markets

34. The Respondent had been registered in the mutual fund industry for only 1 year at the time of his misconduct; his lack of experience is a mitigating factor.

35. The Respondent's registration was terminated by the Member as a result of this conduct.

E. Deterrence

36. A fine of \$5,000 in combination with costs of \$2,500 and a 6-month prohibition on securities related business helps MFDA Staff send a message to the Respondent and others in the capital markets with regard to the seriousness of the misconduct at issue.

F. Respondent's Past Conduct

37. The Respondent has not previously been subject to MFDA disciplinary proceedings.

G. Respondent's Recognition of the Seriousness of His Misconduct

38. By entering into this Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

H. Previous decisions

39. The Panel is cognizant of the fact that it is difficult to find decisions that are precisely on point. Having said that, the case of *Lucas Stemshorn-Russell*⁴ is quite recent and almost exactly

⁴ MFDA File No. 201792, March 7, 2018.

on point. The reasons and authorities cited therein are compelling and indicative of the fact that the penalties in this case are reasonable.

Opinion and Decision

40. It is the opinion of the Panel that the Settlement Agreement:

- a) Is reasonable and proportionate having regard to the conduct of the Respondent;
- b) Sufficiently addresses the issues of both general and specific deterrence; and
- c) Maintains confidence in the integrity of the MFDA and the regulatory process.

41. In the result, the Settlement Agreement is approved and confirmed. The Respondent:

- a) Attended the Settlement hearing;
- b) Is prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 6 months, commencing from the date of the hearing, April 25, 2019;
- c) Shall pay a fine of \$5,000 and costs of \$2,500 both in certified funds as follows:
 - i. \$2,500 (Costs payable forthwith);
 - ii. \$555.55 (Fine) on or before May 31, 2019;
 - iii. \$555.55 (Fine) on or before June 28, 2019;
 - iv. \$555.55 (Fine) on or before July 31, 2019 ;
 - v. \$555.55 (Fine) on or before August 30, 2019;
 - vi. \$555.55 (Fine) on or before September 30, 2019;
 - vii. \$555.55 (Fine) on or before October 31, 2019;
 - viii. \$555.55 (Fine) on or before November 29, 2019;
 - ix. \$555.55 (Fine) on or before December 31, 2019; and
 - x. \$555.55 (Fine) on or before January 31, 2020.

42. These Reasons may be signed in counterpart.

DATED this 10th day of June, 2019.

“Robert G. Ward”

Robert G. Ward, QC
Chair

“Darlene Barker”

Darlene Barker
Industry Representative

“Holly A. Millar”

Holly A. Millar
Industry Representative

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