



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: Edgar Donald Wilcott

Heard: December 13, 2018 in Halifax, Nova Scotia

Decision: December 13, 2018

Reasons for Decision: March 7, 2019

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, QC
Ann C. Etter
Joanne Hebert

Chair
Industry Representative
Industry Representative

Appearances:

Alan Melamud)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Ronald E. Pizzo)	Counsel for the Respondent
)	
)	
Edgar Donald Wilcott)	Respondent, in person
)	
)	

I. INTRODUCTION:

1. On September 11, 2018, the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Hearing against Edgar Donald Wilcott (“Respondent”).
2. The Notice of Hearing provided for a First Appearance by teleconference before a Hearing Panel of the Atlantic Regional Council on November 13, 2018, at 10:00 a.m.
3. On October 16, 2018, the Respondent filed a Reply to the Allegations contained in the Notice of Hearing
4. At the First Appearance, after hearing and considering the submissions of counsel for the MFDA and the Respondent, and with the consent of the parties, an Order was issued that the Hearing on the Merits would take place on December 13, 2018, at 10:00 a.m., at a specified location in Halifax, Nova Scotia.
5. On December 5, 2018, a Settlement Agreement was entered into between Staff of the MFDA (“Staff”) and the Respondent.
6. On December 6, 2018, the MFDA announced that a Settlement Hearing would take place on December 13, 2018, at 10:00 a.m., at the same location in Halifax, Nova Scotia referred to in the November 13, 2018 Order.
7. At the commencement of the Settlement Hearing, on December 13, 2018, an issue arose as to whether sufficient notice had been given with respect to the Hearing.
8. Rule 14 of the MFDA Rules of Procedure sets out in detail the required contents of a Settlement Agreement. The Agreement before us complied fully with Rule 14.
9. Rule 15.3(1) provides as follows:

“15.2 Notice and Public Access

- (1) Except where a settlement is reached after the commencement of the hearing of a proceeding on its merits, a Hearing Panel shall not consider a Settlement Agreement unless at least 10 days notice of the settlement hearing has been given by the Corporation in the same manner as a notice of penalty pursuant to

section 24.5 (Publication of Notice and Penalties) of MFDA By-law No. 1 specifying:

- a) the date, time and place of the settlement hearing; and
- b) the purpose of the settlement hearing with sufficient information to identify the Member or person involved and the general nature of the allegations which are the subject matter of the settlement.”

10. The Hearing Panel then reviewed Rules 1.3(1) and 1.5(1)(b) of the Rules of Procedure. These provide as follows:

“1.3 General Principles

(1) These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness.

1.5 General Powers of a Panel

- (1) A Panel may:
- (b) waive or vary any of these Rules at any time, on such terms as it considers appropriate.”

11. After consideration, the Hearing Panel decided to proceed and consider the Settlement Agreement. Our reasoning for so doing is as follows.

12. The Notice of Hearing, issued on September 11, 2018, detailed the Allegations against the Respondent. The Order issued by the Hearing Panel on November 13, 2018, after the First Appearance, gave notice of the date, time and location of the Hearing on the Merits. These details were contained in a News Release issued the same day by the MFDA.

13. Consequently, at least 10 days’ notice had been provided, identifying the person involved, the general nature of the Allegations which were the subject matter of the Settlement Agreement, as well as the date, time and place where a consideration of the Allegations would occur.

14. In our view, under all the circumstances, it was appropriate to waive certain of the provisions of Rule 15.2 of the Rules of Procedure so that the Settlement Agreement could be considered by the Hearing Panel on the first day set for the Hearing on the Merits.

15. This approach is consistent with that adopted by a previous Hearing Panel in the case of *Jennifer Lynn Killins (Re)*, [2011] MFDA File No. 201109.

II. AGREED FACTS:

16. In the Settlement Agreement, Staff and the Respondent agreed upon the following facts:

“AGREED FACTS

Registration History

7. The Respondent was registered in the mutual fund industry commencing in June 2003.
8. From November 2009 to November 2, 2018, the Respondent was registered in Nova Scotia as a mutual fund salesperson (now known as a Dealing Representative) with Equity Associates Inc. (“Equity”), a Member of the MFDA.
9. From July 2010 to March 2017, Equity designated the Respondent as a branch manager.
10. At all material times, the Respondent conducted business in the Halifax, Nova Scotia area.
11. On November 2, 2018, the Respondent resigned from Equity and the mutual fund industry in response to the matters that are the subject of this Settlement Agreement and this proceeding.
12. The Respondent is not currently registered in the securities industry in any capacity.

Altered Forms

13. Between August 2010 and October 2016, the Respondent altered, and used to process transactions, 180 account forms in respect of 81 clients by altering information on the account forms without having the client initial the alterations.
14. The altered account forms consisted of fund order entry forms.

Pre-Signed Account Forms

15. Beginning in January 2013, Equity’s policies and procedures prohibited its Approved Persons from using pre-signed account forms.
16. Between January 2010 and April 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 286 pre-signed account forms in respect of 74 clients.
17. The pre-signed account forms consisted of fund order entry forms.

Additional Factors

18. On March 23, 2017, Equity placed the Respondent under close supervision.
19. On March 31, 2017, Equity issued a warning letter to the Respondent concerning the conduct described above. Equity also imposed a \$20,000 fine on the Respondent and removed his designation as a branch manager.
20. There is no evidence that the Respondent received any financial benefit from engaging in the conduct described above other than the commissions or fees he would ordinarily be entitled to had the transactions been completed in the proper manner.
21. There is no evidence of client loss or lack of authorization.

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

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

III. ADMISSION OF VIOLATIONS OF MFDA BY-LAWS, RULES AND POLICIES

17. The Respondent admits to the following violations of the MFDA By-laws, Rules or Policies:

- a) between August 2010 and October 2016, the Respondent altered, and used to process transactions, 180 account forms in respect of 81 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between January 2010 and April 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 286 pre-signed account forms in respect of 74 clients, contrary to MFDA Rule 2.1.1.

IV. TERMS OF SETTLEMENT

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

- a) the Respondent shall be prohibited from conducting securities related business in any capacity in the employ of or associated with a Member of the MFDA for a period of 1 year from the date this Settlement Agreement is accepted, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall be prohibited from acting as a branch manager or in a supervisory capacity with a Member of the MFDA for a period of 2 years from the date this Settlement Agreement is accepted, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
- c) the Respondent shall pay a fine in the amount of \$20,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
 - i. \$2,500, in certified funds, upon acceptance of this Settlement Agreement;
 - ii. \$2,916.66, in certified funds, on or before January 31, 2019;
 - iii. \$2,916.66, in certified funds, on or before February 28, 2019;

- iv. \$2,916.66, in certified funds, on or before March 29, 2019;
- v. \$2,916.66, in certified funds, on or before April 30, 2019;
- vi. \$2,916.66, in certified funds, on or before May 30, 2019;
- vii. \$2,916.70, in certified funds, on or before June 28, 2019;
- d) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1; and
- e) the Respondent will attend in person on the date set for the Settlement Hearing..

19. At the Settlement Hearing, Counsel for the Respondent advised the Hearing Panel that the fine would be paid in full upon acceptance of the Settlement Agreement.

V. CONSIDERATIONS FOR ACCEPTING THE SETTLEMENT AGREEMENT

20. Settlements play an important and necessary role in facilitating the MFDA's principal goal of protecting the public. Hearing Panels will not lightly interfere in a settlement agreement reached between Staff and a respondent.

21. However, prior to accepting a Settlement Agreement, the Hearing Panel must be satisfied that:

- a) the facts admitted to by the Respondent constitute misconduct in contravention of the MFDA By-laws, Rules and Policies;
- b) the penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness bearing in mind the nature and extent of all relevant circumstances; and
- c) the agreed penalty should serve as a deterrent to both the Respondent and to the investment industry.

VI. NATURE OF MISCONDUCT

22. The Respondent admitted to altering 180 account forms, without obtaining initials on the alterations, as well as obtaining, possessing and using 286 pre-signed account forms.

23. The Respondent admitted that he had breached MFDA Rule 2.1.1. This 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.

24. Pre-signed account forms are proscribed because their use adversely affects the integrity and 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. As the Hearing Panel explained in *Price (Re)*:

“Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading. . . . At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client. . . . Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client’s signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.”

Price (Re), 2011 CanLII 72458, at paras. 122-124.

25. Hearing Panels have applied precisely the same reasoning to altered account forms.

Owen (Re), 2017 LNCMFDA 287.

Lewis (Re), 2018 LNCMFDA 59.

26. The prohibition on altered and pre-signed account forms applies regardless of whether the client was aware or authorized the use of the proscribed form, and even where the proscribed form is not used by the Approved Person for discretionary trading or other improper purpose.

Price (Re), *supra*.

Owen (Re), *supra*.

27. The MDFDA has previously warned Approved Persons against altering forms or using pre-signed forms:

- a) MFDA Notice #MSN-0066, dated October 31, 2007 (updated March 4, 2013 and January 26, 2017).
- b) MFDA Bulletin #0661-E, dated October 2, 2015.

28. The Respondent's Member's policies and procedures similarly prohibited its Approved Persons from using pre-signed forms.

29. MFDA Bulletin #0661-E, dated October 2, 2015, and MFDA Notice #MSN-0066 advised Members and Approved Persons that enhanced penalties would be sought for conduct which occurred after October 2, 2015. Some of the account forms in question were obtained after this date.

30. Hearing Panels have accepted that conduct occurring post-Bulletin is an aggravating factor:

“In the view of this Hearing Panel, the amount of the fine in this instance together with the extent of the suspension are appropriate, taking into account the nature of the conduct, as well as the aggravating factor of its occurrence subsequent to the issuance of MFDA Bulletin #0661-E on October 2, 2015, the contents of which, the Respondent was, or should have been, well aware.”

Owen (Re), supra, at para. 44.

VII. CONSIDERATIONS IN THE PRESENT CASE

31. As indicated, the use of pre-signed and altered forms, as occurred here, are serious breaches of MFDA Rule 2.1.1.

32. On the aggravating side, the Respondent's conduct is made more troubling by the large number of altered and pre-signed forms involved.

33. A further aggravating factor is that the Respondent was a branch manager, and, therefore, in a supervisory position, at the time of the misconduct.

34. The Hearing Panel was made aware of the following mitigating factors:

- a) the Respondent has not previously been subject of a MFDA disciplinary proceeding;

- b) by entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct. He has also saved the MFDA the time, resources and expenses associated with a full disciplinary proceeding;
- c) there is no evidence that the transactions processed by the Respondent, pursuant to the altered and pre-signed forms, resulted in any client loss or that the transactions were unauthorized; and
- d) there is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

VIII. DETERRENCE

35. Deterrence is intended to capture both specific deterrence of the wrongdoer, as well as general deterrence of other participants in the capital markets, in order to protect investors.

36. Specific deterrence has been achieved in that the Respondent resigned from the mutual fund industry in response to the misconduct and the resulting MFDA proceeding.

37. In our view, the penalties, which were proposed in the Settlement Agreement, will act as a general deterrent and reinforce the message that pre-signed and altered forms are not tolerated either by the MFDA or the mutual fund industry.

IX. PREVIOUS DECISIONS MADE IN SIMILAR CIRCUMSTANCES

38. Staff presented the Hearing Panel with a number of previous MFDA Decisions to demonstrate that the proposed resolution, when combined with the sanction already imposed by the Member, was within the reasonable range of appropriateness. These cases included the following:

- a) *O'Conner (Re)*, MFDA File No. 201756, Hearing Panel of the Prairie Regional Council, Reasons dated October 31, 2018.
- b) *Sharma (Re)*, 2018 LNCMFDA 33.
- c) *Burchill (Re)*, 2017 LNCMFDA 170.

- d) *Doyle (Re)*, 2017 LNCMFDA 47.
- e) *Doyle (Re)*, MFDA File No. 201650, Hearing Panel of the Central Regional Council, Reasons dated March 16, 2017.
- f) *Owen (Re)*, *supra*.

IX. DECISION

39. Having carefully reviewed the Settlement Agreement and considered the written and oral submissions of Counsel for the parties, we unanimously concluded that the Settlement Agreement was in the public interest. Consequently, we signed an Order implementing it.

DATED this 7th day of March, 2019.

“Thomas J. Lockwood”

Thomas J. Lockwood, QC
Chair

“Ann C. Etter”

Ann C. Etter
Industry Representative

“Joanne Hébert”

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Industry Representative

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