



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: Jeffrey Thomas Williams

Heard: March 23, 2020 in Toronto, Ontario
Decision: March 23, 2020
Reasons for Decision: April 3, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Emily Cole
Timothy Pryor
Joe Yassi

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak

) Enforcement Counsel for the Mutual Fund
) Dealers Association of Canada
)

Jeffrey Thomas Williams

) Respondent, in person
)
)

I. INTRODUCTION

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement dated February 14, 2020 (“Settlement Agreement”) between staff of the MFDA (“Staff”) and Jeffrey Thomas Williams (“Respondent”).
2. After reviewing the Settlement Agreement and the material filed by Staff and hearing the submissions of counsel for Staff, the Hearing Panel accepted the Settlement Agreement attached and signed an order reflecting our approval. These are the reasons for our decision.

II. CONTRAVENTIONS

3. Based on the Agreed Facts set out below the Respondent admits that:
 - a) between January 2014 and June 2016, he obtained, possessed, and in some instances, used to process transactions, 12 pre-signed account forms in respect of nine clients, contrary to MFDA Rule 2.1.1;
 - b) between June 2009 and February 2017, he altered and used to process transactions, 18 account forms in respect of 14 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
 - c) between June 2009 and June 2012, he submitted five Letters of Direction directly to mutual fund companies to process transactions in the accounts of three clients without the knowledge or approval of the Member, contrary to the Member’s policies and procedures and MFDA Rules 1.1.1(a), 1.1.2, 2.1.1 and 2.5.1.

III. PROPOSED SANCTIONS

4. Staff and the Respondent agree and consent to the following proposed sanctions:
 - a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of three months, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

- b) the Respondent shall pay a fine in the amount of \$3,350 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- 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 MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rules 1.1.1(a), 1.1.2, 2.1.1 and 2.5.1.

IV. AGREED FACTS

Registration History

5. Commencing in November 1996, the Respondent was registered in the mutual fund industry.

6. From June 2008 to December 2013, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with FundEX Investments Inc. (“FundEX”), a Member of the MFDA.

7. From December 2013 to October 2018, the Respondent was registered in Ontario as a dealing representative with Investia Financial Services Inc.¹ (“Investia”), a Member of the MFDA.

8. The Respondent is no longer registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in the Milton and Whitby, Ontario areas.

Pre-Signed Account Forms

10. At all material times, Investia had policies and procedures that prohibited its Approved Persons from obtaining or using pre-signed account forms.

¹ Investia and FundEX are related companies that are both subsidiaries in the Industrial Alliance Financial Group

11. Between January 2014 and June 2016, while the Respondent was registered at Investia, he obtained, possessed, and in some instances, used to process transactions, 12 pre-signed account forms in respect of nine clients.

12. The pre-signed account forms consisted of:

- a) Four Know Your Client (“KYC”) Update forms;
- b) Three Order Instruction forms;
- c) Four New Account Application forms; and
- d) One Transfer Authorization for Registered Investments (“TARI”) form.

Altered Account Forms

13. At all material times, FundEX and Investia had policies and procedures that required its Approved Persons to obtain client initials on all changes made to client documents.

14. Between June 2009 and February 2013, while the Respondent was registered at FundEX, the Respondent altered and used to process transactions, nine account forms in respect of seven clients by altering information on the account forms without having the client initial the alterations.

15. The altered account forms consisted of:

- a) Four KYC Update forms; and
- b) Five Letters of Direction (“LOD”).

16. The alterations the Respondent made to the account forms included alterations to client KYC information, mutual fund codes and names, and the date on a LOD.

17. Between February 2014 and February 2017, while the Respondent was registered at Investia, the Respondent altered and used to process transactions, nine account forms in respect of nine clients by altering information on the account forms without having the client initial the alterations.

18. The altered account forms consisted of:

- a) Four New Account Application forms;

- b) Two TARI forms;
- c) Two Dealer Change forms; and
- d) One RESP Application form.

19. The alterations the Respondent made to the account forms included alterations to client KYC information and investment instructions.

Processing Transactions Directly with Mutual Fund Companies

20. At all material times, FundEX had policies and procedures that required its Approved Persons to:

- a) carry on all securities related business through the facilities of FundEX; and
- b) submit LOD to FundEX to permit FundEX to supervise transactions.

21. Between June 2009 and June 2012, while the Respondent was registered at FundEX, the Respondent submitted five LOD directly to mutual fund companies to process the following transactions in the accounts of three clients without the knowledge or approval of FundEX:

- a) redeeming \$2,500 from the account of a client;
- b) rebalancing units in various mutual funds held by a client; and
- c) transferring monies between mutual funds in a client's Registered Retirement Savings Plan ("RRSP").

22. All the LOD were signed by the clients. Prior to submitting the LOD to the mutual fund companies, the Respondent made the following alterations to the LOD:

- a) he altered the date on one LOD; and
- b) he altered the fund name and/or fund codes on four LOD.

23. The Respondent did not have the clients initial these alterations, as described above.

24. The Respondent then submitted the LOD directly to the mutual fund companies, and not through the accounts and facilities of FundEX, which impaired FundEX's ability to supervise the Respondent's activities.

Investia's Investigation

25. On or about September 22, 2017, Investia identified the account forms that are the subject of this Settlement Agreement as a result of a branch review. As part of its investigation, Investia reviewed the client files serviced by the Respondent.

26. On November 23, 2017, Investia sent a letter with a three-year transactional summary to all clients whose accounts the Respondent serviced so that the clients could review and ensure that trading activity in their accounts was executed according to client instructions. No clients reported any concerns.

27. On October 1, 2018, Investia issued a termination notice to the Respondent effective October 29, 2018.

Additional Factors

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

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

30. The Respondent states that he has limited financial means and as a result he is unable to pay a monetary penalty that is greater than the total of the fine and costs amounts set out in this Settlement Agreement. MFDA Staff have received evidence which corroborates the Respondent's statement, including Canada Revenue Agency documents (notices of assessment and reassessment and account statements), evidence of current earnings, and personal bank statements.

31. The Respondent acknowledges that if it were not for his limited financial means it would have been appropriate for him to be subject to a greater fine than the fine amount set out in this Settlement Agreement.

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

33. 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.

V. ANALYSIS

A. Jurisdiction of the Hearing Panel

34. A Hearing Panel is authorized to either accept or reject a settlement agreement.

Section 24.4.3 of MFDA By-law No. 1

35. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing 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.”

Milewski (Re), [1999] I.D.A.C.D. No. 17.

Sterling Mutuals Inc. (Re), 2008 LNCMFDA 16 at para 37

36. Settlements are to be encouraged. They make a significant contribution to meeting the MFDA’s primary objective of investor protection by providing a practical and efficient way of addressing misconduct in the securities industry. Where the Respondent takes responsibility and admits his misconduct and the parties can agree upon appropriate sanctions, settlements can save time and conserve the regulator’s limited resources. Settlements also provide certainty and are likely to result in greater compliance with the sanctions imposed.

British Columbia (Securities Commission v. Seifert), [2006] B.C.J. No 225 at paras. 48-49 (S.C.), aff’d [2007] B.C.J. No 2186 at para. 31 (C.A.)

B. The Seriousness of the Misconduct

37. The Respondent admitted to three contraventions involving:

- i. pre-signed account forms;
- ii. altered account forms; and
- iii. processing transactions directly with mutual fund companies.

i. Pre-signed Account Forms

38. The Respondent obtained, possessed and, in some instances used to process transactions, 12 pre-signed forms in respect of nine clients. The pre-signed account forms consisted of:

- a) Four Know Your Client (KYC) Update forms;
- b) Three Order Instruction forms;
- c) Four New Account Application Forms; and
- d) One Transfer Authorization for Registered Investments (TARI) form.

ii. Altered Account Forms

39. The Respondent altered and used to process transactions 18 account forms in respect of 14 clients by altering information on the account forms without having the client initial the alterations. The Respondent admitted he began altering account forms in June 2009 and continued until June 2017.

40. In circumstances where a Respondent alters several account forms over nearly eight years, it is reasonable to infer that altering account forms was the Respondent's practice and not an isolated incident. Altering forms over a prolonged period is a serious contravention of Rule 2.1.1.

41. There was no evidence of client harm or a lack of authorization.

42. The Respondent's obtaining and using pre-signed forms and his practice of making unauthorized changes to forms adversely affects the integrity and reliability of account documents, destroys the audit trail and prevents the Member from effectively supervising its Dealing Representatives and protecting clients and as such are a serious breach of the standard of conduct expected of a Member under Rule 2.1.1.

Rambarran (Re), [2017] Hearing Panel of the Central Regional Council, MFDA
File No. 201629, Panel Decision dated January 13, 2017, at para. 8.

iii. Processing Transactions Directly with Mutual Fund Companies

43. The Respondent submitted five Letters of Direction directly to mutual fund companies to process transactions in the accounts of three clients without the knowledge or approval of the

Member, contrary to the Member's policies and procedures and MFDA Rules 1.1.1(a), 1.1.2, 2.1.1 and 2.5.1.

44. Rule 1.1.1 (a) which requires Approved Persons to conduct all securities related business for the account of the Member and through the facilities of the Member is a fundamental rule which is essential to proper supervision and investor protection.

MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA. An Approved Person must not trade in securities other than through the firm employing him/her, and the firm must have knowledge and consent to those business dealings. The Rule enhances investor protection and strengthens public confidence in the Canadian Mutual Fund Industry, as it creates a regime whereby an approved person is only permitted to sell investment products that have first been approved for sale by the Member, and which are sold through the facilities of the Member, thus ensuring the trading activity is subject to appropriate review and supervision.

Laverdiere (Re), [2010] Hearing Panel of the Pacific Regional Council, MFDA
File No. 200936, Panel Decision dated May 12, 2010, at para. 5.

45. The Respondent's misconduct was also contrary to his Dealer's policies and procedures that required him to, amongst other things:

- a) carry on all securities related business through the facilities of the Member; and
- b) submit Letters of Direction to the Member to permit the Member to supervise transactions.

46. By submitting forms directly to the Mutual Fund Companies, the Respondent prevented the Member from fulfilling its responsibility to supervise its Dealing Representatives and protecting clients.

C. Mitigating Factors

47. We considered the following mitigating factors:

- a) The Respondent recognizes the seriousness of the misconduct;
- b) The Respondent did not receive any benefit as a result of his misconduct;
- c) Investors did not suffer any harm as a result of his misconduct;

- d) The Respondent has not been the subject of any prior MFDA disciplinary proceedings.

D. Ability to Pay

48. We also considered the Respondent's ability to pay. The Respondent's misconduct would ordinarily warrant a greater financial penalty, however the MFDA Sanction Guidelines provide that a Respondent's ability to pay a fine may be taken into consideration in determining the appropriate monetary sanction to be imposed.

MFDA Sanction Guidelines, p.5 para. 11

Bott (Re), 2019 LNCMFDA 36, at paras. 21-22

49. The Respondent has limited financial means and is unable to pay more than the proposed fine and cost amounts agreed to in the Settlement Agreement.

50. Further, paragraph 10 of the Settlement Agreement states that the Respondent is no longer in the securities industry in any capacity.

E. Costs

51. The costs award is appropriate and consistent with previous MFDA decisions.

VI. CONCLUSION

52. We are satisfied that the proposed sanctions, including the three month prohibition of the Respondent's authority to conduct securities related business, the \$3,350 fine and \$2,500 in costs in circumstances where the Respondent has limited financial resources will serve as a specific deterrence to the Respondent, Mr. Williams and a general deterrence to others in the industry who may contemplate engaging in similar misconduct in the future.

53. Staff provided three MFDA decisions which addressed similar misconduct: *Dekker (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201959, Panel Decision dated December 17, 2019, *Bott (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018121, Panel Decision dated February 28, 2019, Caswell Re.

54. Based on a review of these cases and taking into consideration the factors discussed above including the Respondent's limited ability to pay a fine and costs, we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

55. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against the Respondent, Mr. Williams.

56. We thank Staff and the Respondent for agreeing to conduct this Settlement Hearing by videoconference.

DATED this 3rd day of April, 2020.

"Emily Cole"

Emily Cole
Chair

"Tim Pryor"

Tim Pryor
Industry Representative

"Joe Yassi"

Joe Yassi
Industry Representative

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