



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: James Edgar Mitchell Wilson

Heard: September 10, 2021 by electronic hearing in Winnipeg, Manitoba
Decision: September 10, 2021
Reasons for Decision: June 29, 2023

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Richard L. Yaffe, K.C.
Diane Jaspers
Greg Wiebe

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Dean Giles)	Counsel for the Respondent
)	
)	
James Edgar Mitchell Wilson)	Respondent
)	
)	

I. BACKGROUND AND CONTRAVENTIONS

1. By Notice of Settlement Hearing dated July 5, 2021, a hearing panel (the “Panel”) of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened via WebEx on September 10, 2021 to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Panel should accept a settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA and James Edgar Mitchell Wilson (the “Respondent”) on July 2, 2021 with respect to matters for which the Respondent could be disciplined as an Approved Person pursuant to section 24.1.1 of By-law No. 1 of the MFDA.

2. The Settlement Agreement relates to allegations that the Respondent:

- a) between September 2009 and November 2018, obtained, possessed, and in some instances, used to process transactions, 80 pre-signed account forms in respect of 51 clients, contrary to MFDA Rule 2.1.1;
- b) between January 2013 and April 2018, altered and used to process transactions, 15 account forms in respect of 14 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- c) in June 2015, photocopied the signature page from an account form that had been previously signed by a client and re-used the signature page to complete one additional form in respect of the client, contrary to MFDA Rule 2.1.1.

II. FACTS

3. The Respondent has been registered in the Province of Manitoba since September 2006 as a mutual fund dealing representative with FundEx Investments Inc. (“FundEx”), a Member of the MFDA.

4. At all material times, the Respondent conducted business in the Winnipeg, Manitoba area.

5. At all material times, the policies and procedures maintained by FundEx did not permit Approved Persons to obtain, possess or use pre-signed account forms, or to alter account forms after the clients had signed them.
6. Between September 2009 and November 2018, the Respondent obtained, possessed and in some instances, used to process transactions, 80 pre-signed account forms in respect of 51 clients.
7. The pre-signed account forms consisted of Systematic Instructions forms, Order Entry forms, Registered Education Savings Plan Withdrawal forms, Know Your Client Update forms, and New Client Application forms.
8. Between January 2013 and April 2018, the Respondent altered and used to process transactions 15 account forms in respect of 14 clients by altering information on the account forms without having the clients initial the alterations.
9. The altered forms consisted of Order Entry forms, Systematic Instructions forms, RESP Payment forms, and RESP Withdrawal forms.
10. The alterations the Respondent made to the account forms consisted of altering fund codes, fund names, fund descriptions, fund amounts, dates, and withdrawal amounts on the original signed forms.
11. In June 2015, the Respondent photocopied the signature page from an account form that had been previously signed by a client and re-used the signature page to complete one additional form in respect of the client.
12. The account form consisted of a Systematic Instruction form, which the Respondent submitted to FundEx for processing.
13. In February 2019, FundEx identified the account forms during an onsite branch review during where FundEx reviewed all of the client files serviced by the Respondent.
14. On April 15, 2019, FundEx placed the Respondent under strict supervision for a period of 3 months.

15. In August 2019, FundEx sent audit letters to the affected clients along with copies of transaction history portfolio statements of the previous three years, asking clients to review and verify the accuracy of trading activities executed in their accounts. FundEx also asked the clients to advise if their personal or financial circumstances had changed to ensure that their portfolios remained in line with their investment objectives and risk tolerance. No clients reported any concerns to FundEx.

16. On September 12, 2019, FundEx issued a warning letter to the Respondent in respect of his conduct and required the Respondent to pay \$3,436 for costs associated with the audit letters and the strict supervision.

III. DISCUSSION

17. There is no evidence that the Respondent received any financial benefit from the conduct set out above, beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

18. There is no evidence of client loss, client complaints, or lack of authorization.

19. The Respondent has not previously been the subject of a MFDA disciplinary proceeding.

20. The Respondent has cooperated with MFDA staff throughout the course of its investigation and these proceedings and has admitted the allegations.

21. By admitting the facts and contraventions described above, the Respondent has saved the MFDA significant time and resources associated with conducting a fully contested hearing on the merits.

22. The aggravating factors in this case are the nature and extent of the misconduct. The obtaining, and subsequent completion and use, of pre-signed account forms, the alteration of account forms without approval and initialing by clients, and the use of photocopied signature pages, are all contraventions which go to the very core of self-regulation in this industry. The gravity of the contraventions is exacerbated by the number of forms obtained by the Respondent and the number of clients involved. The strict

adherence to the rules and procedures regarding the use of account forms is central to the creation of a self-regulatory system that allows a Member firm to supervise client accounts.

23. A further aggravating factor is that many of the subject forms were processed after the MFDA issued MFDA Bulletin 0661-E on October 2, 2015 (the "Bulletin"). In the Bulletin, MFDA staff advised Members and Approved Persons that MFDA staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin.

24. A further aggravating factor is the Respondent's experience in the securities industry. The Respondent was registered as a mutual fund dealing representative since 2006 and with his considerable experience he ought to have known the MFDA's and FundEx's compliance requirements and respected them.

25. The mitigating factors in this case are that the Respondent has no disciplinary record, there were no client complaints, and there is no evidence of harm or loss to clients.

26. MFDA hearing panels have taken into account the following considerations when determining whether a proposed settlement should be accepted;¹ hearing panels agree that these considerations remain relevant as guidelines for hearing panels in determining whether or not to accept a proposed settlement agreement:

- 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 satisfactorily addresses the issues of both specific and general deterrence with respect to the Respondent and the industry, respectively;
- d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;

¹ *Sterling Mutuals Inc. (Re)*, Hearing Panel of the Central Regional Council, File No. 200820, Decision and Reasons dated August 21, 2008

- 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.

27. The protection of investors is considered by the MFDA to be the primary goal of securities regulation. The goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.²

28. The penalties that are imposed must be sufficient to affirm public confidence in the regulation of the mutual fund industry, and to ensure deterrence.

29. There are a number of general principles that apply when imposing a penalty, which were presented and which the Panel considered.

30. MFDA counsel also reviewed with the Panel various MFDA cases and the penalties imposed in those cases.

31. The Panel may accept or reject the recommended Settlement Agreement (Section 24.4.3 of MFDA By-law No. 1). Further, it is accepted practice that hearing panels should not interfere lightly in a negotiated settlement.

IV. DISPOSITION

32. At the conclusion of the Hearing, the Panel approved a Settlement Agreement entered into by the parties which, *inter alia*, provides as follows:

- a) the Respondent shall pay a fine in the amount of \$30,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1;

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

- c) the Respondent shall successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an industry course acceptable to Staff of the MFDA, within 3 months of the acceptance of the Settlement Agreement, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rules 2.1.1; and
- e) if at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

33. We are satisfied that the penalty agreed upon is reasonable and that the public's interest is served by the Settlement Agreement, and we agree unanimously that the Settlement Agreement should be accepted.

DATED this 29th day of June, 2023.

“Richard Yaffe”

Richard L. Yaffe, K.C.
Chair

“Diane Jaspers”

Diane Jaspers
Industry Representative

“Greg Wiebe”

Greg Wiebe

Industry Representative

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