



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: Kenneth Zukiwski

Heard: February 25, 2016 in Toronto, Ontario
Reasons for Decision: May 16, 2016

**ORAL REASONS FOR DECISION FOR ACCEPTANCE OF
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Patrick Galarneau	Industry Representative
Brigitte Geisler	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Barry Papazian)	Counsel for the Respondent
)	

1. We are here this morning in the matter of a Settlement Hearing pursuant to section 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the matter of Kenneth Zukiwski (the “Respondent”).

Reasons

2. The Hearing Panel has considered the settlement agreement (the “Settlement Agreement”) between Staff of the MFDA (“Staff”) and the Respondent, and has accepted it and approved it as being in the public interest because the agreed penalties are appropriate in the circumstances. The Settlement Agreement is attached herein as Schedule 1.

3. The contraventions in this matter were as follows:

Between January 2011 and January 2014, the Respondent:

- a) obtained, possessed and in some instances, used to process transactions, 12 pre-signed account forms in respect of four clients, contrary to MFDA rule 2.1.1;
- b) altered and used to process transactions, three account forms in respect of two clients, contrary to MFDA rule 2.1.1; and
- c) on four occasions, failed to accurately respond to his Member's annual compliance inquiries by incorrectly responding that he did not obtain or possess any pre-signed account forms, contrary to MFDA rule 2.1.1.

4. The agreed penalties set out in the Settlement Agreement are:

- a) the Respondent shall pay a fine in the amount of \$12,500 pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of MFDA By-law No. 1.

5. The agreed facts are set out in greater detail in section IV of the Settlement Agreement.

6. Staff, obviously, took into account several factors in coming to this Settlement Agreement:

Nature of the misconduct

7. Both the use of pre-signed account forms and altered forms are serious breaches of MFDA Rule 2.1.1.

Client harm

8. There is no evidence of client harm. The Member contacted all of the Respondent's affected clients in order to determine whether the Respondent had engaged in any unauthorized trading. No client reported any concerns to the Member.

Benefits received by the Respondent

9. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, other than usual commissions he would ordinarily be entitled to.

Respondent's experience and level of activity in the capital markets

10. The Respondent has been registered in the mutual fund industry since 1981. He is an experienced dealer representative and ought to have known and respected the compliance requirements of the Member and the MFDA.

Deterrence

11. A fine of \$12,500 and costs of \$2,500 together are significant penalties and help the MFDA to send a message to the Respondent and to others in the capital markets about the seriousness of the misconduct at issue.

Respondent's past conduct

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

Respondent's recognition of the seriousness of misconduct

13. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of lengthy MFDA hearings and investigations. Also, the Respondent cooperated with the Member's internal investigation into his conduct.

Penalty guidelines

14. The proposed penalties are consistent with the MFDA penalty guidelines. The penalty guidelines suggest a minimum fine of \$5,000 for a Rule 2.1.1 violation. The proposed fine of \$12,500 is greater than the suggested minimum amount which reflects the existence of multiple MFDA Rule 2.1.1 violations in this case.

Previous decisions made in similar circumstances

15. We have considered the Book of Authorities that was put together by Staff and also reviewed two cases referred to in Staff's submissions: *Ewart (Re)*, [2015] MFDA Central Regional Council, File No. 201528; *Rutley (Re)* [2015] MFDA Central Regional Council, File No. 201523.

16. The Settlement Agreement in the case before us is within the reasonable range of appropriateness with regard to other decisions made by MFDA hearing panels in similar circumstances.

17. With respect to costs, all things considered, an award of costs against the Respondent in the amount of \$2,500 is appropriate in the circumstances.

18. For these reasons, we accepted the Settlement Agreement.

This written version of the oral Reasons for Decision is

DATED this 16th day of May, 2016.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Patrick Galarneau”

Patrick Galarneau
Industry Representative

“Brigitte Geisler”

Brigitte Geisler
Industry Representative



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SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Kenneth Zukiwski.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part XI) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. The Respondent has been registered in the mutual fund industry since 1981.

7. Since 1992, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investors Group Financial Services Inc. (“Investors Group”), a member of the MFDA.

8. The Respondent has also been registered as a mutual fund salesperson in Alberta since January 2011.

9. At all material times, the Respondent conducted business in the Burlington, Ontario area.

Pre-Signed Forms

10. At all material times, Investors Group's policies and procedures prohibited its Representatives, including the Respondent, from using pre-signed account forms.

11. Between January 2011 and January 2014, the Respondent obtained, possessed, and used to process transactions, 12 photocopied pre-signed account forms in respect of 4 clients.

12. The pre-signed account forms consisted of 8 pre-Authorized Contribution ("PAC") Agreement forms and 4 Investment Instruction forms.

Altered Forms

13. In addition, between January 2011 and January 2014, the Respondent altered and used to process transactions, 3 PAC Agreement forms in respect of 2 clients.

14. The Respondent altered the PAC Agreement forms by making changes to the information on the PAC Agreements after the clients had signed these forms.

Failing to Accurately Respond to Compliance Inquiries

15. On four occasions between 2011 and 2014, the Respondent failed to accurately respond to Investors Group's annual compliance inquiries by incorrectly responding that he did not obtain or possess any pre-signed account forms.

Investors Group's Investigation

16. Investors Group detected the conduct that is the subject of this Settlement Agreement as a result of a branch review completed March 24, 2014, and, immediately commenced an investigation.

17. As part of its investigation, Investors Group reviewed of the Respondent's client files.

18. Investors Group also sent audit letters to all clients affected by the pre-signed account forms and altered forms to determine whether the Respondent has engaged in any unauthorized trading. None of the clients reported any concerns to Investors Group.

19. The Respondent stated that some of the pre-signed and altered account forms in question had been completed by his unlicensed assistant (now retired), but that she had been acting on his instruction.

20. On September 3, 2014, Investors Group sent the Respondent a warning letter with respect to his misconduct.

Additional Factors

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

22. There is no evidence of client harm.

23. The Respondent cooperated into Investors Group's investigation into his conduct.

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

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

V. CONTRAVENTIONS

26. The Respondent admits that between January 2011 and January 2014, he:

- a) obtained, possessed, and used to process transactions, 12 photocopied blank pre-signed forms in respect of 4 clients, contrary to MFDA Rule 2.1.1;
- b) altered and used to process transactions, 3 Pre-Authorized Contribution Agreement forms in respect of 2 clients, contrary to MFDA Rule 2.1.1; and
- c) on four occasions, failed to accurately respond to Investors Group's annual compliance inquiries by incorrectly responding that he did not obtain or possess any pre-signed account forms, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

27. The Respondent agrees to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$12,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule, 2.1.1; and
- d) the Respondent will attend in person, on the date set for the Settlement Hearing

VII. STAFF COMMITMENT

28. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the

provisions of Part XI below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

29. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

30. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

31. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

32. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

33. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

34. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

35. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

36. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

37. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

38. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

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

DATED this 28th day of October, 2015.

“Dave Kavanagh”

Witness – Signature

Dave Kavanagh

Witness – Print name

“Kenneth Zukiwski”

Kenneth Zukiwski

“Shaun Devlin”

Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement



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ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of [Respondent] (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that between January 2011 and January 2014, the Respondent obtained, possessed, and used to process transactions, 12 pre-signed account forms in respect of 4 clients; altered and used to process transactions, 3 Pre-Authorized Contribution Agreement forms in respect of 2 clients; and on four occasions, failed to accurately respond to the Member's annual compliance inquiries by incorrectly attesting that he did not obtain or possess any pre-signed account forms.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall pay a fine in the amount of \$12,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
2. The Respondent shall pay a fine in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
4. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]