



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: Brent L. Barnai

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing issued September 5, 2013, the Mutual Fund Dealers Association of Canada (the “MFDA”) announced that it proposed to hold a hearing concerning a disciplinary proceeding commenced against the Respondent, Brent L. Barnai. Staff of the MFDA (“Staff”) and the Respondent propose to make a request to the hearing panel of the MFDA Central Regional Council (the “Hearing Panel”) to consider whether, pursuant to section 24.4 of By-law No. 1, the Hearing Panel should accept the settlement agreement entered into between Staff and the Respondent (the “Settlement Agreement”);

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 X) 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. From November 22, 2010 to March 1, 2012, the Respondent was registered in Ontario as a mutual fund salesperson with TD Investment Services Inc. (“TDIS”), a Member of the MFDA.

7. The Respondent resigned from TDIS on March 1, 2012.

8. At all material times, the Respondent conducted business in Port Colborne, Ontario.

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

Allegation #1: Falsification of Client Signatures

a) Client NS

10. On February 10, 2012, the Respondent's branch manager noticed, while conducting daily trade reviews, that the Respondent had not submitted a Transaction and Account Maintenance Form ("Transaction Form") in respect of a redemption made by the Respondent in the account of client NS. The branch manager contacted the Respondent and requested that he provide a Transaction Form completed by client NS in respect of the redemption..

11. The Respondent falsified client NS's signature on a Transaction Form populated with the details of the redemption and submitted it to the branch manager on February 13, 2012.

12. The branch manager reviewed the Transaction Form and noticed that the signature on the Transaction Form did not match client NS's signature on prior account documents. As a result, TDIS commenced an internal investigation of the Respondent's dealings with client NS.

13. On February 23, 2012, TDIS interviewed the Respondent as part of its investigation. During the interview, the Respondent advised TDIS that:

- a)** the Respondent met client NS on February 9, 2012 and received instructions to process the redemption in client NS's account;
- b)** as a result of problems with his computer, the Respondent was unable, during the meeting, to generate a Transaction Form for client NS to sign; and
- c)** the Respondent therefore arranged for client NS to return to his office on a later date to sign the Transaction Form.

14. During the course of its investigation, TDIS spoke with client NS, who acknowledged that she had authorized the redemption in her account. MFDA Staff subsequently interviewed client NS who, in addition to confirming that she had authorized the redemption in her account,

stated that the signature on the Transaction Form was not hers and that she had not signed the Transaction Form on either February 9, 2012 or thereafter.

15. On March 1, 2012, the Respondent resigned from TDIS.

b) Client OB

16. After the Respondent resigned, TDIS conducted a review of all of the accounts serviced by the Respondent to determine whether he had falsified client signatures in other accounts.

17. During this review, TDIS identified two forms in relation to the account of client OB, namely a Transaction Form, dated January 23, 2012, and a New Client Information Profile (“Client Profile”) recording the client’s Know-Your-Client (“KYC”) information, dated January 27, 2012, on which the Respondent had falsified the client’s signature.

18. The Transaction Form and the Client Profile related to a \$1,000 contribution to client OB’s RRSP account that the Respondent had processed.

19. The Respondent had resigned from TDIS before TDIS was able to question him about the forms relating to client OB. TDIS confirmed with client OB that she had authorized the transaction in her RRSP. Client OB subsequently confirmed for MFDA Staff that the signatures on the Transaction Form and the Client Profile submitted to TDIS by the Respondent were not hers.

Additional Factors

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

21. The Respondent’s conduct did not result in client harm. The Respondent states that he engaged in the conduct for the convenience of the clients and to facilitate their redemption requests.

22. The Respondent did not benefit from his conduct.

23. The Respondent has expressed remorse for his actions.

24. Following the publication of the Notice of Hearing, the Respondent has cooperated with Staff and has remedied his failure to cooperate by submitting to a telephone interview with Staff and entering into this Settlement Agreement concerning the subject matter of Allegation #1, which includes an admission of misconduct. As a consequence, notwithstanding that the Respondent's cooperation with Staff's investigation was provided after the fact, in the circumstances of this case, Staff has withdrawn Allegation #2 as part of the final settlement of this proceeding.

V. CONTRAVENTIONS

25. The Respondent admits that, between January and February 2012, he falsified the signatures of two clients on account forms, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall, for a period of nine (9) months, be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay costs of \$1,500, 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;
- d) Staff shall withdraw Allegation #2 in the Notice of Hearing; and
- e) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

27. 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 Respondent 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 X 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

28. 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.

29. 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 its 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.

30. 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.

31. 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

32. 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

33. 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.

34. 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

35. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 29th day of July, 2014.

“Sarah Glickman”

Witness – Signature

Sarah Glickman

Witness – Print name

“Brent L. Barnai”

Brent L. Barnai

“Shaun Devlin”

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



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Re: Brent L. Barnai

ORDER

WHEREAS on September 5, 2013, 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 Brent L. Barnai (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [insert] (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 and February 2012, the Respondent falsified the signatures of two clients on account forms, contrary to MFDA Rule 2.1.1.

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

1. The Respondent shall, for a period of nine (9) months, be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay costs of \$1,500, 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;
4. Staff has withdrawn Allegation #2 in the Notice of Hearing;
5. 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]