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: Roberto Gabriel Mammone

Heard: March 2, 2012 in Toronto, Ontario
Reasons for Decision: March 12, 2012

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Patrick T. Galligan, Q.C.	Chair
Vasant Pachapurkar, CFP	Industry Representative
Ronald Willis CLU, CFSB	Industry Representative

Appearances:

Michelle Pong	)	Counsel, Mutual Fund Dealers Association of
	)	Canada ("MFDA")
Kevin Richard	)	Counsel for the Respondent
	)	

1. The Staff of the Mutual Fund Dealers Association of Canada ("MFDA") and the Respondent, Roberto Gabriel Mammone, entered into a Settlement Agreement pursuant to sections 24.4.1 and 24.4.2 of By-law No. 1 of the MFDA. On recommendation of the MFDA, and in accordance with section 24.4.3 of the by-law, the Settlement Agreement was then referred to this Hearing Panel for acceptance or rejection. After hearing counsel for the parties and considering the exhibits filed, we concluded that we should accept the Settlement Agreement. We made an Order accepting the Settlement Agreement and indicated that reasons for our decision would follow in due course. These are those reasons.

2. There is no dispute about the facts of the case. The parties have agreed that they are as set out in the Notice of Hearing. The facts are as follows:

Registration History

3. From July 3, 2007 to May 13, 2009, the Respondent was registered in Ontario as a mutual fund salesperson with Royal Mutual Funds Inc. ("Royal"). The Respondent was terminated by Royal as a result of the events described herein and is not currently registered in the securities industry in any capacity.

4. The Respondent was previously registered in Ontario as a mutual fund salesperson with TD Investment Services Inc. from February 2002 to June 2007.

Background

5. On or about April 17, 2009, the Respondent was requested by his Branch Manager to obtain client signatures on six account documents that had been identified as missing in Royal's monthly Missing Accounts Documentation Aging Report (the "Report") generated by Royal's head office, in preparation for an upcoming internal operational audit commencing on or about May 5, 2009. The six account documents that were identified in the Report as missing were:

Client	Description of Form	Date on form
DL	1 "account opening information (KYC)" form	March 2, 2009
DL	2 "registered retirement income fund (RRIF) investment switch" forms	March 2, 2009
LL	1 "client acknowledgement" form	January 30, 2009

Client	Description of Form	Date on form
PC/AC	1 “account opening information (KYC)” form	March 6, 2009
EM	1 “account opening information (KYC)” form	March 3, 2009

6. The Report is produced monthly as a means of identifying instances where account documents required for a particular transaction may have not been completed or, if completed, may have been misfiled, lost or were otherwise not scanned into Royal’s back office system located at its head office.

7. Later that same day (i.e. on or about April 17, 2009), the Respondent advised his Branch Manager that he had obtained all of the required client signatures.

8. The Branch Manager was suspicious that the Respondent had apparently obtained the signatures so quickly and advised the Manager of Financial Planning of her concern.

9. On or about April 24, 2009, the Manager of Financial Planning met with the Respondent and asked him how he had managed to obtain the client signatures in such a short period of time and apparently without the clients visiting the branch. The Respondent admitted to the Manager of Financial Planning that he had falsified the signatures of clients DL, LL, PC and EM on the six account documents.

10. All six of the account documents related to trading activity initiated by the client. There were no client complaints. There was no evidence that the Respondent had used the account documents to conduct unauthorized or discretionary trading in the clients’ accounts. In the case of the three “account opening information (KYC)” forms, the Respondent had re-created the content of the “account opening information (KYC)” forms by using the existing information on file that had previously been scanned into Royal’s back office system and then falsifying the clients’ signatures on the new forms.

11. The Respondent provided the MFDA with the following explanations for falsifying the signatures on the account documents:

(a) Client DL: the Respondent states that on or about March 2, 2009, DL completed and signed the “account opening information (KYC)” form and two “registered retirement

income fund (RRIF) investment switch" forms that were subsequently identified as missing in the Report. On or about April 17, 2009 (i.e. the date the Respondent was requested by his Branch Manager to obtain the client's signatures on the forms), the Respondent states that he completed new forms to the best of his recollection, falsified the signature of DL on the forms, and then placed the forms in the client file until the Respondent could locate DL's original forms or DL could return to the branch to complete the forms again;

(b) Client LL: the Respondent states that on or about January 30, 2009, LL met with the Respondent to discuss her existing RSP account and decided to purchase a market-linked GIC. The Respondent states that he forgot to ask LL to sign a "client acknowledgement" form in respect of her GIC purchase. On or about April 17, 2009, the Respondent states that he falsified the signature of LL on the form and then placed the form in the client file until LL could return to the branch to sign the form;

(c) Clients PC and AC: the Respondent states that on or about March 6, 2009, PC and his mother, AC met with the Respondent to review AC's accounts. The Respondent states that the "account opening information (KYC)" form subsequently identified as missing in the Report was signed by PC and AC on that date. On or about April 17, 2009, the Respondent states that he completed a new form, falsified the signature of PC only on the form, and then placed the falsified form in the client file until PC could return to the branch to complete the form again; and

(d) Client EM: EM is the Respondent's father. The Respondent has power of attorney over EM's financial matters. On or about March 3, 2009, CM, the Approved Person responsible for servicing EM's accounts, conducted a series of transactions involving EM's RSP account at the request of the Respondent on behalf of EM. The Respondent states that he forgot to ask EM to sign an "account opening information (KYC)" form in respect of one of the transactions. The form was subsequently identified as missing in the Report. On or about April 17, 2009, the Respondent states that he falsified the signature of EM on the form and submitted it to the Branch Manager.

12. By falsifying the signatures of clients DL, LL, PC and EM on the account documents in the manner described above, the Respondent engaged in conduct contrary to MFDA Rule 2.1.1.

13. It is clear from jurisprudence emanating from the courts, and from MFDA and Investment Dealers Association of Canada ("IDA") hearing panels, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty agreed upon is a reasonable one, that is, whether it is one which falls within the range of penalties imposed in other cases and whether it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry. As the settlement meets those requirements it is our duty to approve it.

14. It is useful to refer to one court decision and to certain decisions of hearing panels of the MFDA and of the IDA. In *British Columbia Securities Commission v. Seifert* (2008), 72 B.C.L.R. (4th) 72, the British Columbia Court of Appeal adopted the following statement of principle:

> Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing.

15. A hearing panel of the IDA in *Re Clark*, [1999] I.D.A.C.D. No. 40 came to the following conclusion:

> It was submitted by staff and accepted by the panel that its role under By-law 20.26 is not the same as its role under By-law 20.10 following a hearing. In considering a settlement under By-law 20.26 the panel should not simply substitute its discretion for that of staff

who negotiated the settlement. The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement. In our view, as a result, panels must also be careful in using previous settlements as precedent. The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a hearing where similar findings are made.

16. Similar views were expressed by the hearing panel of the IDA which decided the matter of *Re Milewski*, [1999] I.D.A.C.D. No. 17:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement 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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

17. The final decision to which we wish to refer is that of a hearing panel of the MFDA in *Re William Todd Gillick*, [2009] MFDA File No. 200910. We cite from page 2 of that decision:

> 3. It is always desirable that parties settle these matters and the panel should not lightly fail to approve a settlement if it falls within a reasonable range.

18. In the light of that jurisprudence, we consider the circumstances of this case. They have been set out earlier. We do not minimize the seriousness of the Respondent's conduct. However, there are a number of things which militate in his favour.

(a) The Respondent has never previously been the subject of a disciplinary proceeding by the MFDA;

(b) All account documents related to trading activity were initiated by the clients. There is no suggestion that the Respondent used the account documents to conduct unauthorized or discretionary trading in the clients' accounts;

(c) The Respondent did not falsify the clients' signatures for the purpose of obtaining any financial benefit to himself;

(d) The Respondent promptly admitted his misconduct and indicated that he recognized the seriousness of the misconduct;

(e) By entering into a Settlement Agreement, the Respondent has accepted responsibility for his misconduct and thereby has avoided the necessary of the MFDA conducting a lengthy hearing involving considerable expense to the membership of the MFDA; and

(f) No client complained to the employer and there is no evidence of harm to any client.

19. After considering the factors contained in the Guidelines, the decisions of hearing panels in similar cases and the need to protect the integrity of the investment industry, we formed the opinion that the proposed settlement was a reasonable one. As noted above, at the conclusion of the settlement hearing we approved of it.

DATED this 12th day of March, 2012.

"Patrick Galligan"
The Hon. Patrick T. Galligan, Q.C.,
Chair

"Vasant Pachapurkar"
Vasant Pachapurkar, CFP,
Industry Representative

"Ronald Willis"
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