



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: Jose Coelho

Heard: January 28, 2016 in Toronto, Ontario
Reasons for Decision: April 25, 2016

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

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Casimir Litwin	Industry Representative
Robert. C. White	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Graham Splowski)	Counsel for the Respondent
)	

Background

1. We are here this morning in the matter of a settlement hearing pursuant to section 24.4 of the By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”) concerning Jose Coelho (the “Respondent”).

2. The Hearing Panel has previously received a copy of the settlement agreement (the “Settlement Agreement”) and the submission of Staff and a Book of Authorities. We have considered everything carefully and we are prepared to approve the Settlement Agreement. Therefore, there’s no need to go in-camera.

3. I am to deliver an oral Decision and Reasons and I ask the court reporter to prepare a transcript to be used as the basis of the written version for the record.

Decision

4. We approve the Settlement Agreement as being in the public interest because the agreed penalties are appropriate and reasonable and within acceptable parameters based on precedent cases. Therefore, we accept the Settlement Agreement.

Reasons

Facts

5. The facts are set out in part 4 of the Settlement Agreement, which is attached to the written version of these oral reasons as Schedule “1”.

Contraventions

6. The Respondent admits that he obtained, possessed and in some instances used to process transactions, 49 pre-signed account forms in respect of 27 clients, contrary to MFDA Rule 2.1.1,

and that the Respondent altered and used, to process transactions, six client account forms in respect of seven clients, contrary to MFDA Rule 2.1.1.

Penalty

7. The penalties agreed to are to pay a fine of \$12,500 and to pay costs in the amount of \$2,500.

Appropriateness of Penalties

8. For the reasons set out in the Settlement Agreement and in the submission of counsel, we find that this Settlement Agreement is in the public interest because the agreed penalties are within an acceptable range for offences of this nature. Therefore, we accept the Settlement Agreement.

9. There was no harm to clients.

10. There was no deliberate misdirection or fraud.

11. Indeed, it appears that client instructions were carried out. The only problem is that the action was contrary to the Rules and there must be consequences for that because the Rules are in place so that there will be an audit trail and that things will be properly documented.

12. However, this is not a case for the kind of penalty that would be more severe than necessary, such as a prohibition or something that would cause real harm to the Respondent and to the Member.

13. The Member placed the Respondent under close supervision for a 12-month period. The Member contacted clients. The Member satisfied itself that there was no harm and that things now are under control and that the Respondent understands that what he did was wrong and it will not be repeated.

14. According to the Settlement Agreement, the Respondent is remorseful. The Respondent is present today.

15. For all these factors, having considered the cases referred to in the book of authorities and in staff's submission, we determine that the penalties are quite appropriate under the circumstances.

This written version of the oral Reasons for Decision is

DATED this 25th day of April, 2016.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Casimir Litwin”

Casimir Litwin
Industry Representative

“Robert C. White”

Robert C. White
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, Jose Coelho.

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. Since 1997, the Respondent has been registered as a mutual fund salesperson (now known as Dealing Representative) in Ontario with Sun Life Financial Investment Services (Canada) Inc.¹ (“Sun Life”), a Member of the MFDA.

7. At all material times, the Respondent conducted business in the Waterloo, Ontario area.

¹ Before merging in 2002, known as Sun Life Financial Services (Canada) Inc. and Clarica Investco Inc.

Pre-Signed Account Forms

8. Between August 2006 and September 2013, the Respondent obtained, possessed, and in some instances, used to process transactions, a total of 49 blank pre-signed client account forms in respect of 27 clients.

9. Of the 49 blank pre-signed forms, which included order entry forms, Pre-Authorized Contribution Agreement forms, and Know-Your-Client forms, 17 were used.

Falsified Account Forms

10. Between August 2006 and September 2013, the Respondent obtained, altered, and used to process transactions, 6 order entry forms, in respect of 7 clients.

Post-Detection

11. Sun Life's compliance staff detected the conduct that is the subject of this Settlement Agreement as a result of an audit of the Respondent's client files on October 31, 2013.

12. Sun Life conducted an interview with the Respondent on November 8, 2013. After the interview, on November 25, 2013, Sun Life conducted a further comprehensive audit of all the Respondent's files, revealing further irregular forms.

13. As part of its investigation, Sun Life sent letters to all clients serviced by the Respondent to determine whether the Respondent had engaged in any unauthorized trading in their accounts. None of the clients reported any concerns to Sun Life.

14. As part of its investigation, Sun Life directed the Respondent's Branch Manager to meet with all clients affected by the conduct that is the subject of this Settlement Agreement whose forms were submitted for processing.

15. Additionally, Sun Life telephoned 21 of the clients affected by the Respondent's conduct. 16 of these clients reported satisfaction with the handling of their accounts, while the remaining 5 were either unreachable or unable to communicate in English.

16. The Respondent had obtained limited trade authorizations for all of the affected clients.

17. On June 16, 2014, Sun Life placed the Respondent under close supervision for a 12 month period. No compliance concerns regarding the Respondent have arisen as a result.

Additional Factors

18. 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.

19. The Respondent is remorseful.

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

21. 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

22. The Respondent admits that between August 2006 and September 2013:

- a) he obtained, possessed, and in some instances, used to process transactions, 49 pre-signed forms in respect of 27 clients, contrary to MFDA Rule 2.1.1; and
- b) he obtained, altered and used to process transactions, 6 client account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

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

24. 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 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 I 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

25. 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.

26. 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.

27. 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.

28. 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

29. 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 proceedings 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

30. 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.

31. 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

32. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 10th day of November, 2015.

“Mary Jane Braid”

Witness – Signature

Mary Jane Braid

Witness – Print name

“Jose Coelho”

Jose Coelho

“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 August 2006 and September 2013, the Respondent obtained, possessed, and in some instances, used to process transactions, 49 pre-signed blank forms in respect of 27 clients, and, obtained, altered and used to process transactions, 6 client account forms in respect of 7 clients, 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 pay a fine in the amount of \$12,500 pursuant to s. 24.1.1.(b) of the MFDA By-law No.1;
2. The Respondent shall pay costs 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]