



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: Catherine Ann Gowing

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:

Paul Blasiak)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Catherine Ann Gowing)	In Person
)	

Background

1. We are here this morning in the matter of a settlement agreement pursuant to section 24.4 of By-law No 1 of the Mutual Fund Dealers Association of Canada in the matter of Catherine Ann Gowing (the “Respondent”). A copy of the settlement agreement (the “Settlement Agreement”) is attached as Schedule “1”.

2. The panel has received a copy of the Settlement Agreement and the submission of Staff concerning this matter and the book of authorities prepared by Staff. We had an opportunity to review the materials before the start of the proceedings this morning and we have no difficulty in approving the Settlement Agreement. Therefore we will not go in-camera.

Decision

3. We approve and accept the Settlement Agreement because it is in the public interest in that the agreed penalties are reasonable and appropriate in the circumstances.

Reasons

Contravention

4. The contravention of the Rules by the Respondent is that on one occasion the Respondent filled in the signature of a client on an application form for a tax-free savings account.

5. It appears that the client attended at the offices of the Respondent, filled out a bunch of forms, did a bunch of things, and, we surmise, went home. Later, it was discovered that a signature had been missed and that signature was applied by the Respondent, contrary to the Rules.

Penalty

6. The agreed penalty is a three month prohibition from being in the Mutual Fund business and costs of \$1000. There is no fine.

Appropriateness of Penalty

7. There was no misappropriation or self-serving fraud involved.

8. There was no client harm.

9. There was no personal profit to the Respondent other than the usual commissions, if any, that the Respondent would make from trades.

10. There was no indication of dishonesty, other than the fact that the Rules were broken.

11. The Respondent is now out of the business. The Respondent stopped working for the Member after this matter came to light and it has been a period of time since that has happened.

Precedents and Guidelines

12. We considered the various cases referred to us by Staff and the MFDA guidelines on penalties.

13. The guidelines are stated to be guidelines only. They are not mandatory. They provide for a minimum suggested fine of \$5,000 per offence.

14. That would be totally inappropriate in this case. There was just one event, one client and, in view of the other considerations we set out, it would be overkill in the extreme to impose any kind of fine. One might even look at the prohibition as being rather harsh. However, it is not too harsh because the Respondent is out of the business. Therefore, this three-month prohibition will not have a devastating effect on a book of business because it doesn't appear there is any book of business of the Respondent.

15. So taking all these things into account, we determined that the Settlement Agreement is reasonable, appropriate, and acceptable and sends the right message in the circumstances. And for that reason, we have approved and accepted the Settlement Agreement.

16. As stated by the panel in *Barnai*¹:

“We are pleased that Staff has shown flexibility in this case by not insisting on a fine that would meet the suggested minimum in the MFDA penalty guidelines. Those guidelines are not mandatory and specifically contemplate cases such as this one where a fine would not produce the most appropriate result.”

17. We also want to compliment Staff for having that flexibility. In this particular case, justice is being done as it should be.

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

DM 474248 v1

¹ *Barnai (Re)* MFDA File No. 201325, Decision of the Central Regional Council, dated March 17, 2015, at para. 30.



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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, Catherine Ann Gowing.

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 IX) 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 May 9, 2001 to October 29, 2014, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Royal Mutual Funds Inc. (“Royal Mutual”), a Member of the MFDA.

7. On October 29, 2014, Royal Mutual terminated the Respondent as a result of the events described herein. The Respondent is not currently registered in the securities industry in any capacity.

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

Falsification of Client's Signature

9. On October 11, 2014, the Respondent met with client LS in order to open a Tax Free Savings Account ("TFSA") at Royal Mutual and to process a contribution in the TFSA. Client LS provided the Respondent with the relevant account forms including a Tax-Free Savings Account Application form (the "TFSA Application Form").

10. Following the meeting between the Respondent and client LS, the Respondent observed that client LS had not signed on the signature line in the "Successor Information" section of the TFSA Application Form. Upon realizing this, the Respondent falsified client LS's signature on the relevant signature line and submitted the TFSA Application Form to Royal Mutual for processing.

11. Later in October 2014, the Respondent's Branch Manager reviewed the TFSA Application Form and observed that client LS's purported signature in the "Successor Information" section of the TFSA Application Form did not match client LS's signature on other account documents.

12. As a result, the Respondent's Branch Manager interviewed the Respondent. During the interview, the Respondent admitted that she had falsified client LS's signature on the TFSA Application Form.

13. In a written statement to the MFDA dated November 9, 2014, the Respondent stated that she falsified client LS's signature on the TFSA Application Form because she did not want to inconvenience client LS by requesting that she re-attend at the Respondent's branch location.

Additional Factors

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

15. The signature falsification that the Respondent made on the TFSA Application Form did not alter client LS's investment intentions and there was no client complaint.

16. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above, beyond the commissions or fees she would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

17. 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

18. The Respondent admits that, on October 11, 2014, she falsified a client's signature on an account form in order to open an account for the client, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall be prohibited for three months from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$1,000, 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

20. 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 IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts or 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

21. 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.

22. 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 her 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.

23. 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.

24. 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 her.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

25. 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

26. 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.

27. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that she 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

28. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 25th day of November, 2015.

“Kim Hyslop”

Witness – Signature

“Catherine Ann Gowing”

Catherine Ann Gowing

Kim Hyslop

Witness – Print name

“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 Catherine Ann Gowing (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, on October 11, 2014, the Respondent falsified a client's signature on an account form in order to open an account for the client, 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 be prohibited for three months from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$1,000, 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]