



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: Tony Nathan Estabrooks

Heard: July 18, 2016 in Edmonton, Alberta
Reasons for Decision: August 31, 2016

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, Q.C.

Nada Israeli

Howard Mix

Chair

Industry Representative

Industry Representative

Appearances:

David Babin

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Counsel for the Mutual Fund Dealers
Association of Canada

Matthew Epp

Counsel for the Respondent

INTRODUCTION

1. On April 4, 2016 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 of the MFDA in respect of Tony Nathan Estabrooks (the "Respondent").
2. The Respondent and the MFDA Staff propose to enter into a Settlement Agreement dated June 22, 2016 pursuant to which the Respondent would be disciplined under ss. 20 and 24.1.1 of By-law No. 1 of the MFDA.
3. The proposed Settlement Agreement provides that the Respondent shall:
 - (a) pay a fine of \$7,500 pursuant to section 24.1.1.(b) of By-law No. 1,
 - (b) pay costs of \$2,500 pursuant to section 24.2 of By-law No. 1,
 - (c) in future comply with MFDA Rule 2.1.1, and
 - (d) attend in person on the date set for the Settlement Hearing.
4. On July 18, 2016, after hearing representations by counsel and by the Respondent, this Panel approved the Settlement Agreement, with written reasons to follow, and agreed to sign an Order to that effect. The written reasons for such approval are set out below.

AGREED FACTS

Registration

5. Between May 27, 2013 and April 28, 2015, the Respondent was registered in Alberta as a dealing representative with Royal Mutual Funds Inc." ("Royal"), a Member of the MFDA.
6. The Respondent was previously registered as a dealing representative with BMO Investments Inc. between January 20, 2011 and April 25, 2013.

7. At all material times, the Respondent conducted business in the Edmonton, Alberta area.
8. The Respondent is not presently registered in the securities industry in any capacity

ALTERED ACCOUNT FORMS

9. At all material times, Royal's policies and procedures prohibited its Approved Persons from using altered or pre-signed account forms.
10. On or about January 7, 2015 and April 8, 2015, the Respondent re-used existing order tickets after receiving verbal instructions for two separate clients (KP and KT) by altering either the contribution amount or the date on the order tickets that had previously been submitted to Royal on another transaction. The Respondent then resubmitted the altered trade tickets to Royal for processing, without having the clients initial the alterations.
11. The transactions were processed in accordance with client instructions.

BLANK AND PARTIALLY COMPLETED PRE-SIGNED ACCOUNT FORMS

12. Between October 2014 and April 2015, the Respondent obtained, possessed and used to process transactions, 26 pre-signed account forms in respect of 13 clients.
13. The 26 pre-signed forms were comprised of:
 - (a) 2 Registered Plan and Investment Account Switch Forms;
 - (b) 17 Trade Tickets in respect of contributions made to a Registered Plan or Investment Account; and
 - (c) 7 Trade Tickets in respect of transfers of Registered Plan from outside financial institutions to Royal.

MEMBER RESPONSE

14. On May 14, 2015, Royal reviewed all transactions processed by the Respondent between October 1, 2014 and April 27, 2015. The Member did not identify any additional pre-signed or altered forms beyond those noted at paragraphs 10 to 13 above.

15. No clients complained or advised Royal that they had not authorized the transactions in their accounts.

ADDITIONAL FACTORS

16. The Respondent has no prior disciplinary history with the MFDA.

17. There is no evidence of client harm in this matter.

18. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct other than the fees to which the Respondent would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner.

19. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to this settlement, has avoided the necessity of a full hearing on the merits.

20. The Respondent has expressed remorse for his misconduct.

ACCEPTANCE OF THE SETTLEMENT AGREEMENT

21. This Panel is mindful of the comments about the role of a Hearing Panel at a settlement hearing stated in *Sterling Mutuals Inc. (Re)* [2008] File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at p 37, (*Sterling Mutuals*) citing the I.D.A. Ontario District Council in *Milewski (Re)* that:

“in a settlement hearing, the Panel 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.”

22. This Panel is similarly mindful of the comments about the benefits of settlements aptly noted by the British Columbia Court of Appeal in *British Columbia (Securities Commission) v. Seifert*, [2007] B.C.J. No. 2186 (B.C.C.A.) in referencing passages from the Supreme Court of Canada in *R. v. 974649 Ontario Inc.*, 2001 SCC 81, [2001] 3 S.C.R. 575, particularly the following at paragraph 49:

“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 in dispute, and are therefore to be resolved by way of a hearing.”

23. This Panel is also mindful of the list of considerations set out in the *Sterling Mutuals* decision as well as the MFDA Penalty Guidelines which hearing panels may take into account in their determination of whether a proposed settlement agreement should be accepted.

24. This Panel has considered the following factors as relevant and aggravating:

a) Nature of the Misconduct - Pre-signed forms

The Respondent altered and used to process transactions, two client account Forms in relation to two clients, and obtained and used 26 pre-signed partially completed or photocopied versions of pre-signed partially completed forms in respect of 13 client accounts. This Panel regards the conduct as an aggravating factor, notwithstanding that

no client was harmed. As noted in *Price (Re)* MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011, at paras. 118-121), pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading, they create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client, and subvert the ability of a Member to properly supervise trading activity.

b) Experience in the Securities Industry

The Respondent has worked in the securities industry as a mutual fund sales person (now mutual fund dealing representatives) since 2011. With that level of experience, this Panel considers that the Respondent knew, or should have known, before the time period in question, that the practice under investigation was prohibited by the Rules of the MFDA and accordingly constitutes a further aggravating factor.

25. This Panel considers the following factors as mitigating:

a) Past Conduct

The Respondent has never previously been subject of an MFDA disciplinary proceeding.

b) Recognition of Seriousness of the Misconduct

The Respondent has cooperated with the investigation by MFDA Staff, has accepted responsibility for his misconduct by entering into the Settlement Agreement, spared the MFDA the time and expense of a full contested hearing and attended in person at the hearing, all of which demonstrate his recognition of the seriousness of the misconduct.

c) Client Harm and Benefits to Respondent

Staff found no evidence of unauthorized trades, client losses or client complaints, or that the Respondent received a financial or other benefit through his conduct.

26. This Panel has also considered the following additional factors as relevant:

a) Penalty Guidelines

The Hearing Panel considered the MFDA Penalty Guidelines for breach of the Standard of Conduct Rule 2.1.1, while noting that they are neither mandatory nor binding. This Panel also noted that the parties have jointly proposed that the Respondent be assessed a fine of \$7,500 which is in line with the recommended penalty set out in the MFDA Penalty Guidelines.

b) Deterrence

A fine in line with that recommended by the Penalty Guidelines for breach of the standard of conduct of Approved Persons and an order for costs is necessary to achieve both specific and general deterrence, to deter the Respondents from repetition of such conduct and to deter others in the capital market from engaging in similar activity. It further demonstrates that the Respondent's misconduct in all of the circumstances is serious and has significant consequences.

c) Previous Decisions in Similar Cases

The recent decisions of *Weller (Re) MFDA File No. 201544* Hearing Panel of the Central Regional Council, Decision and Reasons dated February 19, 2016, *Wellman (Re)*, MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015, *Lynn (Re)*, MFDA File No. 201537, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015, and *McKale (Re)*, MFDA File No. 201333, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 16, 2014, all involved imposed fines and costs awards in

similar amounts to the fine and costs proposed in the Settlement Agreement under consideration in this case.

27. In conclusion, based on consideration of the above factors, this Panel is satisfied that the Settlement Agreement is in the public interest, is reasonable and proportionate, and will foster public confidence in the integrity of the Canadian capital markets and the industry and, accordingly, approves its terms. The Settlement Agreement is attached as Schedule “A” to these reasons for decision.

28. This Panel thanks counsel for their helpful presentation and the Respondent for providing further particulars of the surrounding circumstances to assist this Panel in its deliberations.

DATED this 31st day of August, 2016.

“Shelley L. Miller”

Shelley L. Miller, Q.C.
Chair

“Nada Israeli”

Nada Israeli
Industry Representative

“Howard Mix”

Howard Mix
Industry Representative

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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: Tony Nathan Estabrooks

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Tony Nathan Estabrooks (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").

2. Staff conducted an investigation of the Respondent's activities which disclosed 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.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondent admits that:
 - a) between January 2015 and April 2015, altered and used to process transactions, two client account forms in relation to two clients, by altering the dates on previously used client account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
 - b) between October 2014 and April 2015, he obtained, possessed and used to process transactions, 26 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1.

5. Staff and the Respondent agree and consent to the following terms of settlement:
 - a) the Respondent shall pay a fine in the amount of \$7,500, pursuant to section 24.1.1(b) of By-law No. 1;
 - b) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of 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.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule "A".

III. AGREED FACTS

Registration History

7. Between May 27, 2013 and April 28, 2015, the Respondent was registered in Alberta as a dealing representative with Royal Mutual Funds Inc. ("Royal"), a Member of the MFDA.

8. The Respondent was previously registered as a dealing representative with BMO Investments Inc. between January 20, 2011 and April 25, 2013.

9. At all material times, the Respondent conducted business in the Edmonton, Alberta area.

10. The Respondent is not presently registered in the securities industry in any capacity.

Altered Account Forms

11. At all material times, Royal's policies and procedures prohibited its Approved Persons from using altered or pre-signed account forms.

12. On or about January 17, 2015 and April 8, 2015, the Respondent re-used existing order tickets after receiving verbal instructions for two separate clients (KP and KT) by altering either the contribution amount or the date on two order tickets that had previously been submitted to Royal on another transaction. The Respondent then resubmitted the altered trade tickets to Royal for processing, without having the clients initial the alterations.

13. The transactions were processed in accordance with client instructions.

Blank and Partially Completed Pre-Signed Account Forms

14. Between October 2014 and April 2015, the Respondent obtained, possessed and used to process transactions, 26 pre-signed account forms in respect of 13 clients.

15. The 26 pre-signed forms were comprised of:

- i) 2 Registered Plan and Investment Account Switch Forms;
- ii) 17 Trade Tickets in respect of contributions made to a Registered Plan or Investment Account; and
- iii) 7 Trade Tickets in respect of transfers of Registered Plan from outside financial institutions to Royal.

Member Response

16. On May 14, 2015, Royal reviewed all transactions processed by the Respondent between October 1, 2014 and April 27, 2015. The Member did not identify any additional pre-signed or altered forms beyond those noted at paragraphs 12 to 15 above.

17. No clients complained or advised Royal that they had not authorized the transactions in their accounts.

Additional Factors

18. The Respondent has no prior disciplinary history with the MFDA.

19. There is no evidence of client harm in this matter.

20. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which the Respondent would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner.

21. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to this settlement, has avoided the necessity of a full hearing on the merits.

22. The Respondent has expressed remorse for his misconduct.

IV. ADDITIONAL TERMS OF SETTLEMENT

23. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

24. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the “Settlement Hearing”). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

25. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

26. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- i) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- ii) the Respondent waives any 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;
- iii) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and the contraventions described in this Settlement Agreement. 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 this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- iv) 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; and
- v) 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 the Respondent.

27. If, for any reason, this Settlement Agreement is not accepted 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 the Settlement Agreement or the settlement negotiations.

28. Staff and the Respondent agree that the terms of the 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.

29. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

DATED this 18th day of July, 2016.

“Tony Nathan Estabrooks”

Tony Nathan Estabrooks

“DB”

Witness – Signature

DB

Witness – Print Name

“Shaun Devlin”

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



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Tony Nathan Estabrooks

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 Tony Nathan Estabrooks (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:

- a) between January 2015 and April 2015, altered and used to process transactions, two client account forms in relation to two clients, by altering the dates on previously used client account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and

b) between October 2014 and April 2015, the Respondent obtained, possessed and used to process transactions, 26 pre-signed account forms in respect of 13 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 \$7,500, pursuant to section 24.1.1(b) of By-law No. 1.
2. the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of 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]