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: Stefan Christopher Markus

Heard: December 14, 2017 in Toronto, Ontario
Decision: December 14, 2017
Reasons for Decision: February 7, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart	Chair
Rob Christianson	Industry Representative
Robert J. Wright, CM, QC	Industry Representative

Appearances:

Sarah Glickman	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Stefan Christopher Markus	)	Respondent, in person
	)	
	)	

I. Background

1. Proceedings were commenced against Stefan Christopher Markus ("Respondent") by Notice of Settlement Hearing, dated August 8, 2017. The settlement hearing was held under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada ("MFDA") on December 14, 2017 in respect of a settlement agreement, dated August 8, 2017, ("Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent.

2. The Hearing Panel accepted the proposed Settlement Agreement at the conclusion of the hearing. These are our Reasons for Decision.

II. Respondent's Admission of Violation

3. The Respondent admitted that on or about November 27, 2015 he signed the signature of one client on an account form contrary to MFDA Rule 2.1.1.

III. Agreed Facts

4. Since March, 2015, the Respondent has been registered as a mutual fund salesperson with BMO Investments Inc. ("BMO"), a Member of the MFDA.

5. At all material times, client MR was a client of BMO whose account was serviced by the Respondent.

6. On April 17, 2015, client MR signed an account form in order to complete a purchase of a mutual fund with a risk rating of "low to medium", which the Respondent submitted to BMO for processing.

7. BMO subsequently identified an inconsistency between the risk rating of the mutual fund selected by client MR and the "low" risk tolerance for client MR on file at BMO. As a result,

BMO asked the Respondent to contact the client to re-attend at the bank to discuss her account and the "Know Your Client" account information on file.

8. On or about November 27, 2015, rather than contact client MR, the Respondent completed a Non-Financial Account Amendment Form on which he indicated that client MR had a "low to medium" risk tolerance, signed client MR's signature on the form ("Account Form"), and submitted it to BMO.

9. On November 27, 2015, BMO's compliance department became aware of the Respondent's conduct after his branch manager identified that the client signature on the Account Form was in the Respondent's handwriting.

10. BMO contacted client MR, who confirmed her risk tolerance was "low to medium" and signed an updated Know Your Client form to that effect.

11. BMO reviewed approximately 40 transactions processed by the Respondent and identified no other concerns.

12. On January 13, 2016, BMO issued a warning letter to the Respondent.

IV. Terms of Settlement

13. Staff and the Respondent agreed on the following terms of settlement:

   a) the Respondent shall pay a fine in the amount of $5,000 pursuant to section 24.1.1 (b) of MFDA By-law No. 1;
   b) the Respondent shall pay costs in the amount of $2,500 pursuant to section 24.2 of MFDA By-law No. 1; and
   c) the Respondent shall in the future comply with MFDA Rule 2.2.1.

V. Considerations

14. In determining whether to accept the Settlement Agreement, the Hearing Panel considered whether it was reasonable and proportionate, having regard to the Respondent's conduct; whether it would serve as a specific and general deterrent; and whether it fell within a reasonable range, having regard to MFDA guidance and other similar cases.

15. When an Approved Person signs a client's signature on an account form it is a serious breach of MFDA Rule 2.1.1, which requires that the Approved Person deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from any business conduct or practice which is unbecoming or detrimental to the public interest.

16. We note that the MFDA has been warning the industry against signing client's names for a number of years, most recently by way of MFDA Bulletin #0661-E, dated October 2, 2015, in which the MFDA warned that it would be seeking increased penalties in upcoming cases involving signature falsification.

17. In deciding to accept the Settlement Agreement, the Panel took into consideration several mitigating factors concerning the Respondent, including that there was no evidence of financial loss suffered by the client; there was no evidence that the Respondent received any financial benefit from the misconduct beyond usual commissions and fees from the transaction; and the Respondent recognized the seriousness of his misconduct. We also noted that the Respondent has not previously been subject to MFDA disciplinary proceedings.

18. The proposed penalty is consistent with the MFDA's Penalty Guidelines, which suggest a minimum fine of $5000 for a violation of MFDA Rule 2.1.1, and is also consistent with other similar cases when considering MFDA Bulletin #0661-E.

VI. Conclusion

19. We concluded that the agreed penalty was reasonable and proportionate, having regard to the Respondent's conduct, would serve as a specific and general deterrent and fell within a reasonable range, having regard to MFDA guidance and precedents. Accordingly, we concluded that it was in the public interest to accept the Settlement Agreement and we did so.

DATED this 7th day of February, 2018.

"Joan Smart"

Joan Smart
Chair

"Rob Christianson"

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Industry Representative

"Robert J. Wright"

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Industry Representative

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