



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: Moon-Gil Daniel Oh

Heard: August 30, 2018 in Toronto, Ontario

Decision: August 30, 2018

Reasons for Decision: October 26, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

W.A. Derry Millar
Kenneth P. Mann
Joseph Yassi

Chair
Industry Representative
Industry Representative

Appearances:

Thomas Ng)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Moon-Gil Daniel Oh)	Respondent, in person
)	
)	

I. Introduction

1. The Staff of the Mutual Funds Dealers Association (“Staff”) entered into a settlement agreement with Moon-Gil Daniel Oh (“Respondent”) with respect to the allegations made against the Respondent. This Settlement Hearing was convened to determine whether the Hearing Panel would accept the settlement agreement dated April 24, 2018 (“Settlement Agreement”). At the Settlement Hearing, we accepted the Settlement Agreement and signed the Order implementing the settlement. Attached as Schedule “1” is a copy of the Settlement Agreement. These are our reasons for accepting the Settlement Agreement. The Settlement Agreement sets out the facts agreed to by Staff and the Respondent.

II. Contraventions – Penalty

2. In the Settlement Agreement, the Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) between December 2009 and February 2017, the Respondent falsified, and used to process transactions, 22 account forms in respect of 17 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between March 2009 and December 2016, the Respondent obtained, possessed, and used to process transactions, 7 pre-signed account forms in respect of 6 clients, contrary to MFDA Rule 2.1.1.

3. In the Settlement Agreement, Staff and the Respondent agree and consent to the following penalty:

- a) the Respondent shall pay a fine in the amount of \$13,000 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;

- b) the Respondent shall pay costs in the amount of \$2500 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.2 of By-law No. 1; and
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1.

4. Staff advised us that the Respondent had paid to the MFDA in escrow pending acceptance of the Settlement Agreement \$13,000 for the fine and \$2,500 for the costs.

III. Considerations for Accepting the Settlement Agreement

5. Staff submitted that the acceptance of the Settlement Agreement would advance the public interest as the Respondent has admitted to his misconduct and the proposed penalties are reasonable and proportionate having regard to the nature and extent of the Respondent's misconduct and all of the circumstances.

6. Prior to accepting a Settlement Agreement, we must be satisfied that:

- a) the facts admitted to by the Respondent constitute misconduct in contravention of the By-laws, Rules or Policies of the MFDA; and
- b) the penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness bearing in mind the nature and extent of the misconduct and all of the circumstances.

7. We agree with the submissions of Staff:

- a) pursuant to section 24.4.3 of MFDA By-law No. 1, a Hearing Panel has two options with respect to the settlement agreement. It may either accept the settlement agreement or reject it;
- b) a Hearing Panel should not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness;

- c) settlements worked out by the parties should be respected, as panels do not know what led to the settlement, or what was given up by the parties during the course of the negotiations; and
- d) settlements assist the MFDA in meeting its regulatory objective of protecting the public by proscribing activities that are harmful to the public, and by enabling flexible remedies tailored to the interests of both the MFDA and the Respondent.

8. There is no question that the use of pre-signed account forms contravenes the MFDA Rules. The MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years and Hearing Panels have consistently held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1. We agree with the submission of Staff that the prohibition on the use of pre-signed account forms applies regardless of whether the client was aware, or authorized the use, of the pre-signed account forms; and the forms were used by the Approved Person for discretionary trading or other improper purposes.

9. There is also no question that falsifying or altering forms contravenes the standard of conduct set out in MFDA Rule 2.1.1. We agree with the submission of Staff that the prohibition against falsifying or altering forms exists regardless of the existence of client authorization with the motive behind the use of the form. As with pre-signed account forms, the MFDA has been warning Approved Persons against falsifying or altering forms for a number of years. We agree with Staff that the creation, possession or use of a falsified form is serious misconduct and affects the integrity and reliability of account documents.

10. MFDA Bulletin #0661-E dated October 2, 2015 (“Bulletin”) reminded Members and Approved Persons that “Signature Falsification” is not permissible under MFDA Rules. Under the Bulletin, “Signature Falsification” includes conduct like pre-signed account forms, altered account forms and the falsification of a client signature. In the Bulletin and in the MFDA Staff Notice #MSN-0066 updated on January 26, 2017, Members and Approved Persons were advised that Staff would be seeking to enhance the penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015. Here, 5 of the account forms

were obtained after the Bulletin was issued and Staff submits that this is an aggravating factor which must be taken into account and which has been taken into account by other Hearing Panels.

11. We are satisfied that the facts admitted by the Respondent constitute misconduct in contravention of MFDA Rule 2.1.1.

12. In our view, the penalties proposed and agreed to in the Settlement Agreement fall within a reasonable range of appropriateness bearing in mind the nature and extent of the conduct and all of circumstances.

13. In arriving at our conclusion, we have taken into consideration:

- a) there is no evidence of any financial loss suffered by clients nor any financial benefit received by the Respondent from engaging in the conduct beyond the commissions and fees that he would ordinarily be entitled to had the transactions been carried out in the proper manner;
- b) the Respondent has been registered in the mutual fund industry since September 2009 and ought to have known and respected the compliance requirements of the Member and the MFDA;
- c) the Respondent has not previously been subject to MFDA disciplinary proceedings;
- d) the fine of \$13,000 is significant and sends a message to the Respondent and others in the capital markets about the seriousness of the misconduct at issue in this case;
- e) the fine and costs agreed to are within the reasonable range of appropriateness with regard to the decisions on penalty of other Hearing Panels dealing with similar misconduct;
- f) by entering into this Settlement Agreement, the Respondent accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing; and
- g) it was clear to us that the Respondent, from his comments and demeanor at the Settlement Hearing, will not repeat this conduct in the future.

14. For these reasons, we accepted the Settlement Agreement and the fine of \$13,000 agreed to in it and the payment of \$2,500 for costs and signed the Order presented to us at the Settlement Hearing.

DATED this 26th day of October, 2018.

“W. A. Derry Millar”

W. A. Derry Millar
Chair

“Kenneth P. Mann”

Kenneth P. Mann
Industry Representative

“Joseph Yassi”

Joseph Yassi
Industry Representative

DM 636180

Schedule “1”

Settlement Agreement

File No. 201853



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: Moon-Gil Daniel Oh

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Moon-Gil Daniel Oh (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 to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada (“MFDA”):

- a) between December 2009 and February 2017, the Respondent falsified, and used to process transactions, 22 account forms in respect of 17 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between March 2009 and December 2016, the Respondent obtained, possessed, and used to process transactions, 7 pre-signed account forms in respect of 6 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 \$13,000 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of this Settlement Agreement, 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. Since September 2009, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investia Financial Services Inc. (“Investia”), a Member of the MFDA.

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

Falsified Forms

9. Beginning in November 2013, Investia's policies and procedures required that where any material changes are made to a client's trade documents, they must be initialed by the client.

10. Between December 2009 and February 2017, the Respondent falsified, and used to process transactions, 22 account forms in respect of 17 clients by altering information on the account forms without having the client initial the alterations.

11. The falsified account forms consisted of new account application, order instruction, transfer authorization, systematic instruction, and Know-Your-Client update forms.

Pre-Signed Account Forms

12. At all material times, Investia's policies and procedures prohibited its Approved Persons from using pre-signed account forms.

13. Between March 2009 and December 2016, the Respondent obtained, possessed, and used to process transactions, 7 pre-signed account forms in respect of 6 clients.

14. The pre-signed account forms consisted of new account application, order instruction, and systematic instruction forms.

Investia's Response

15. On March 14, 2017, Investia's compliance staff identified the falsified and pre-signed forms that are the subject of this Settlement Agreement as a result of a routine branch audit.

16. As part of its investigation, Investia conducted a review of all of the client files serviced by the Respondent and sent letters to all of the clients who are current serviced by the Respondent to determine whether the Respondent had engaged in any unauthorized trading. No clients reported any concerns.

17. On May 24, 2017, Investia placed the Respondent under strict supervision.

18. On January 16, 2018, Investia issued a warning letter to the Respondent.

Additional Factors

19. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above other than the commissions or fees he would ordinarily be entitled to had the transactions been completed in the proper manner.

20. There is no evidence of client loss or lack of authorization.

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

22. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

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. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of

MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

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:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) 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;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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;
- d) 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

- e) 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 24th day of April, 2018.

“Moon-Gil Daniel Oh”

Moon-Gil Daniel Oh

“PL”

Witness – Signature

PL

Witness – Print Name

“Shaun Devlin”

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: Moon-Gil Daniel Oh

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 Moon-Gil Daniel Oh (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 the Respondent:

- a) between December 2009 and February 2017, the Respondent falsified, and used to process transactions, 22 account forms in respect of 17 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and

- b) between March 2009 and December 2016, the Respondent obtained, possessed, and used to process transactions, 7 pre-signed account forms in respect of 6 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 \$13,000 in certified funds upon acceptance of this Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
2. the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of this Settlement Agreement, 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, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all 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]