



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: Kathleen Louise Caswell

Heard: July 26, 2018 in Toronto, Ontario
Decision: July 26, 2018
Reasons for Decision: September 4, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

| | |
|------------------------|-------------------------|
| Paul M. Moore, QC | Chair |
| Guenther W. K. Kleberg | Industry Representative |
| Edward V. Jackson | Industry Representative |

Appearances:

| | | |
|-------------------------|---|---|
| Paul Blasiak |) | Enforcement Counsel for the Mutual Fund |
| |) | Dealers Association of Canada |
| |) | |
| |) | |
| Kathleen Louise Caswell |) | Respondent, in person |
| |) | |
| |) | |

Background

1. The Hearing Panel accepted the settlement agreement dated February 26, 2018 (“Settlement Agreement”) between the staff of the MFDA and Kathleen Louise Caswell (“Respondent”). A copy of the Settlement Agreement is attached to these Reasons as Appendix “A”. The agreed facts are set out in Section III of the Settlement Agreement.

Contraventions

2. The Respondent admitted that:
- a) between 2010 and September 2016, she obtained, possessed, and in nine instances, used to process transactions, 37 pre-signed account forms in respect of 27 clients, contrary to MFDA Rule 2.1.1; and
 - b) between May 2010 and December 2015, she falsified, and in eight instances, used to process transactions, 12 account forms in respect of ten clients by altering information on the account without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were:
- a) a fine of \$2,500;
 - b) a costs award of \$2,500; and
 - c) a two months prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member.

The monetary amounts are payable in instalments.

Considerations

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the agreed penalty.

Nature of the Misconduct

5. Altering account forms without the client initialling the changes, and obtaining, possessing and using pre-signed account forms is conduct contrary to MFDA Rule 2.1.1.

Other considerations in determining acceptability of agreed penalties

6. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees the Respondent would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

7. There was no evidence of client loss or lack of client authorization.

8. The Respondent has not previously been subject to MFDA disciplinary proceedings.

9. The Respondent resigned her employment with the Member and is no longer registered in the securities industry in any capacity.

10. By entering into the Settlement Agreement, the Respondent has accepted responsibility for the misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

11. The Respondent required time over which to pay the monetary penalty and costs of \$5,000.

12. The agreed penalties are within the recommendations of the MFDA penalty guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

Costs

13. The costs award is reasonable.

Conclusion

14. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 4th day of September, 2018.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Edward V. Jackson”

Edward V. Jackson
Industry Representative

DM 631388

Appendix “A”

Settlement Agreement

File No. 201833



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Kathleen Louise Caswell

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Kathleen Louise Caswell (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 MFDA:

- a) between 2010 and September 2016, the Respondent obtained, possessed, and in 9 instances, used to process transactions, 37 pre-signed account forms in respect of 27 clients, contrary to MFDA Rule 2.1.1; and
- b) between May 2010 and December 2015, the Respondent falsified, and in 8 instances, used to process transactions, 12 account forms in respect of 10 clients by altering information on the account forms without having the clients initial the alterations, 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 be prohibited for two months from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1.(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$2,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500, pursuant to s. 24.2 of MFDA By-law No. 1;
- d) the payment by the Respondent of the fine and costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$1,000 shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$400 shall be paid on or before the last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - iii. \$400 shall be paid on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;

- iv. \$400 shall be paid on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - v. \$400 shall be paid on or before the last business day of the fourth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - vi. \$400 shall be paid on or before the last business day of the fifth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - vii. \$400 shall be paid on or before the last business day of the sixth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - viii. \$400 shall be paid on or before the last business day of the seventh month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - ix. \$400 shall be paid on or before the last business day of the eighth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - x. \$400 shall be paid on or before the last business day of the ninth month following the acceptance of the Settlement Agreement by the Hearing Panel; and
 - xi. \$400 shall be paid on or before the last business day of the tenth month following the acceptance of the Settlement Agreement by the Hearing Panel;
- e) if the Respondent fails to make any of the payments described above in subparagraph 5(d) then:
- i. any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA; and
 - ii. the Respondent shall continue to be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the fine and costs

owed by the Respondent is paid to the MFDA, pursuant to s. 24.3.13(c) of MFDA By-law No. 1;

- f) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- g) 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. From August 2009 to April 2017, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA.

8. On April 28, 2017, the Respondent resigned from Investors Group, and she is no longer registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in the Collingwood, Ontario area.

Pre-Signed Account Forms

10. At all material times, Investors Group’s policies and procedures prohibited its Approved Persons, including the Respondent, from using pre-signed account forms.

11. Between 2010 and September 2016, the Respondent obtained, possessed, and in 9 instances, used to process transactions, 37 pre-signed account forms in respect of 27 clients.

12. The pre-signed account forms consisted of:

- 14 transfer authorization forms;
- 11 client application forms;
- 4 investment instructions forms;
- 4 pre-authorized contribution agreement forms;
- 3 Know-Your-Client forms; and
- 1 client update form.

Falsified Account Forms

13. Between May 2010 and December 2015, the Respondent falsified, and in 8 instances, used to process transactions, 12 account forms in respect of 10 clients by using whiteout and/or pen to alter information on the account forms without having the clients initial the alterations.

14. The falsified account forms consisted of:

- 10 transfer authorization forms;
- 1 pre-authorized contribution agreement form; and
- 1 client update form.

Action Taken by the Member

15. In July 2016, Investors Group compliance staff identified 2 of the falsified account forms described above after the Respondent had submitted them processing. Investors Group compliance staff subsequently conducted a review of all the Respondent's client files and identified the remaining pre-signed and falsified account forms that are the subject of this Settlement Agreement.

16. In March 2017, Investors Group sent letters to all clients serviced by the Respondent to determine, among other things, whether she had engaged in any unauthorized trading in the clients' accounts. None of the clients reported any concerns.

17. In April 2017, Investors Group issued a warning letter to the Respondent with respect to the conduct described above.

Additional Factors

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

19. There is no evidence of any client loss or that the transactions were unauthorized.

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.

IV. ADDITIONAL TERMS OF SETTLEMENT

22. 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.

23. 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.

24. 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.

25. 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 facts and 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;
- 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.

26. 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.

27. 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.

28. 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 26th day of February, 2018.

“Kathleen Louise Caswell”

Kathleen Louise Caswell

“LK”

Witness – Signature

LK

Witness – Print Name

“Shaun Devlin”

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



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Re: Kathleen Louise Caswell

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 Kathleen Louise Caswell (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 2010 and September 2016, the Respondent obtained, possessed, and in 9 instances, used to process transactions, 37 pre-signed account forms in respect of 27 clients, contrary to MFDA Rule 2.1.1; and
- b) between May 2010 and December 2015, the Respondent falsified, and in 8 instances, used to process transactions, 12 account forms in respect of 10 clients by

altering information on the account forms without having the clients initial the alterations, 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 two months from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1.(e) of MFDA By-law No. 1;

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

3. The Respondent shall pay costs in the amount of \$2,500, pursuant to s. 24.2 of MFDA By-law No. 1;

4. The payment by the Respondent of the fine and costs shall be made to and received by MFDA Staff in certified funds as follows:

- i. \$1,000 shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
- ii. \$400 on or before [insert date];
- iii. \$400 on or before [insert date];
- iv. \$400 on or before [insert date];
- v. \$400 on or before [insert date];
- vi. \$400 on or before [insert date];
- vii. \$400 on or before [insert date];
- viii. \$400 on or before [insert date];
- ix. \$400 on or before [insert date];
- x. \$400 on or before [insert date]; and
- xi. \$400 on or before [insert date];

5. If the Respondent fails to make any of the payments described above in paragraph 4 then:
- i. any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA; and
 - ii. the Respondent shall continue to be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the fine and costs owed by the Respondent is paid to the MFDA, pursuant to s. 24.3.13(c) of MFDA By-law No. 1;
6. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
7. 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]