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: Robert Laurie Bowness

Heard: December 18, 2013 in Halifax, Nova Scotia
Decision and Reasons: January 16, 2014

DECISION AND REASONS

Hearing Panel of the Atlantic Regional Council:

The Hon. D. Merlin Nunn, Q.C.	Chair
Yves Duguay	Industry Representative

Appearances:

Michelle Pong	)	Enforcement Counsel, Mutual Fund Dealers Association of Canada
Stuart McInnes	)	Agent for the Respondent
Robert Laurie Bowness	)	Respondent

1. Pursuant to an Order dated November 29, 2013, this Hearing Panel of the Atlantic Region of the Mutual Fund Dealers Association of Canada (the "MFDA") was convened on December 18, 2013 for a Settlement Hearing.

2. Originally the Panel consisted of three members, the third being Darrel Bing, an industry representative. Mr. Bing took part in the previous appearances conducted by teleconference on November 27, 2013 and November 29, 2013. However, December 18, 2013 at Halifax was a snowstorm day with long traffic tie-ups and though we waited for almost an hour, the MFDA Registrar was advised by Mr. Bing that he was unable to get to Halifax and thus could not attend the Hearing.

3. Section 19.9(b) of MFDA By-law No. 1 provides the Chair of a Hearing Panel is empowered to make the decision whether or not to proceed with a two-member Hearing Panel. This issue was discussed with staff of the MFDA ("Staff") and Mr. McInnes and the Respondent, Robert Laurie Bowness (the "Respondent"), in an open Hearing and no objections were made to continuing the Hearing as a two-member Panel. As it was obvious the parties were anxious to proceed with the Hearing, I made the decision to do so as a two-member Panel.

4. Since it was a Settlement Hearing, the Panel, pursuant to Section 24.4 of MFDA By-law No. 1 was to consider whether it should accept the Settlement Agreement signed December 10, 2013 between the Respondent and Staff.

5. As the Settlement Agreement is of no effect until accepted by the Panel, Staff made a Motion, agreed to by the Respondent, to move the proceedings "*in camera*". The Panel considered and granted the Motion. The Panel also considered and granted a Staff Motion to abridge the time limits provided for in the MFDA Rules of Procedure and Section 24 of By-Law No. 1, as the Respondent concurred, and any breach of the time rules was minimal, and it was in the best interest of all concerned that the Hearing should continue.

6. Staff made submissions as to the applicable law which should guide the Panel in its task to decide whether to accept or reject the Settlement Agreement, and further submissions relating to why this Settlement Agreement met the appropriate criteria.

7. The facts as contained in the Settlement Agreement and agreed upon by the Respondent are set out in Article IV of the Settlement Agreement as follows:

IV. AGREED FACTS

REGISTRATION HISTORY

6. From January 28, 2009 to March 1, 2012, the Respondent was registered in Nova Scotia, New Brunswick, and Newfoundland and Labrador as a mutual fund salesperson with Quadrus Investment Services Ltd. ("Quadrus"), a Member of the MFDA.

7. The Respondent was previously registered as a mutual fund salesperson:

(a) from September 2004 to January 2009, in Nova Scotia, New Brunswick, and Newfoundland and Labrador with Legacy Associates Inc. ("Legacy"), a Member of the MFDA; and

(b) from May 1998 to September 2004, in Nova Scotia, with Investors Group Financial Services Inc., a Member of the MFDA.

8. On March 1, 2012, the Respondent was terminated by Quadrus for reasons unrelated to the events described herein. The Respondent is not currently registered in the securities industry in any capacity.

9. At the material time giving rise to the events described herein, the Respondent carried on business from Bedford, Nova Scotia.

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

Facts

Allegation # 1 - Pre-signed Forms

11. On December 10, 2009, Quadrus conducted a compliance review of the Respondent's sub-branch and found one pre-signed blank redemption form in the file of client DH. Quadrus reviewed 25 more client files and found no additional pre-signed forms. Quadrus discussed with the Respondent that he was not permitted to hold or use blank pre-signed forms to process transactions in client accounts. In response, the Respondent stated that the pre-signed form was a "one off" for a client that lived out of town and wanted the funds as soon as the transfer of funds took place, but it was never used as the client decided not to process the redemption.

12. In March 2010, Quadrus provided the Respondent with a report which outlined the findings from the compliance review. The report required, among other things, that the Respondent confirm that he was "aware of the seriousness of keeping pre-signed forms and ensure any such forms are destroyed." On May 10, 2010, the Respondent confirmed by email that he had addressed all concerns noted in the report and would ensure that all deficiencies were resolved.

13. On June 21, 2010, the Respondent obtained a blank pre-signed form from client RB to conduct purchases in the account of client RB. The Respondent made and used photocopies of the blank pre-signed form to conduct a total of 11 purchases between July 2010 and July 2011. The Respondent received appropriate instructions from client RB as to the selection and amounts of the mutual funds to be purchased.

14. On February 25, 2011, the Respondent obtained two blank pre-signed forms from client AT.

15. On May 4, 2011, the Respondent obtained a blank pre-signed form from client RT. The Respondent made seven photocopies of the same blank pre-signed form and thereafter, acting

on the instructions of client RT, processed eight redemptions of $4,900 each in the account of client RT on May 4, 9, 11, 16, 17, 18, 19 and 20, 2011. Client RT instructed the Respondent to make the redemptions in the amounts stated and directed the Respondent to exercise his judgment in determining which mutual funds to redeem.

16. During a monthly trade review in May 2011, Quadrus discovered that the Respondent had used one blank form that had been pre-signed by client RT to conduct trades for client RT. By email on June 1, 2011, Quadrus' Provincial Compliance Officer advised the Respondent that "... Photocopies of documents bearing client signatures are not to be used for multiple transactions. Clients must sign the original of all documents. Under no circumstances should a client be asked to sign a form in blank and amounts must not be added or changed at a later date ... if obtaining signatures and timely processing for these clients is a problem a Limited Trading Authorization Form can be used...".

17. On October 13, 2011, Quadrus conducted a second compliance review of the Respondent's sub-branch and found blank pre-signed forms in 23 client files out of the 49 client files reviewed. The blank pre-signed forms were removed by Quadrus for further review by its Head Office. The Respondent was asked by Quadrus to confirm that he was aware that keeping pre-signed forms was strictly prohibited and was directed to destroy any pre-signed forms remaining in his possession.

18. Quadrus' Head Office conducted a review of the Respondent's client files and found more blank pre-signed forms, including redemption forms, with questionable signatures. In total, Quadrus identified 68 blank pre-signed forms pertaining to the accounts of 26 clients, 26 of which were obtained while he was a mutual fund salesperson with Legacy.

19. During the material time, Quadrus' written policies and procedures (the "Policies and Procedures") prohibited its Approved Persons from using pre-signed forms. The Respondent was aware that the Policies and Procedures prohibited the use of pre-signed forms.

20. Staff is not aware of any client complaints nor did Staff's investigation find any evidence of unauthorized trading relating to the Respondent's possession or use of blank pre-signed forms.

Allegation # 2 - Authorized Discretionary Trading

21. As stated above, on May 4, 2011, the Respondent obtained a blank pre-signed form from client RT. The Respondent made seven photocopies of the blank pre-signed form and used the original and copies to process eight redemptions of $4,900 each in the account of RT on May 4, 9, 11, 16, 17, 18, 19 and 20, 2011. Client RT instructed the Respondent to make the redemptions in the amounts stated and directed the Respondent to exercise his judgment in determining which mutual funds to redeem.

Allegation # 3 - Falsification of Signatures

22. While reviewing the Respondent's client files, Quadrus noticed discrepancies in the client signatures on the redemption forms of four clients, and advised Staff. In response to Staff's query about the discrepancies, the Respondent admitted that he had signed the names of six clients on a total of 16 transaction forms.

Section 29 of the Settlement Agreement provides in part that:

> "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 ..."

8. At the conclusion of Staff's submissions, Mr. McInnes, as Agent for the Respondent, indicated to the Panel that the Respondent cooperated fully with the MFDA and provided all documents of a 10 year period. He then indicated that the obtaining of the 68 pre-signed forms of Allegation # 1 was authorized at the time by his supervisor. It was to accommodate clients over a large geographical area. None of the 68 blank pre-signed forms found were used by the Respondent.

9. As to Allegation # 2 the redeeming of funds on 8 days, close in time, was for tax purposes and would inconvenience his client if he had to return to Halifax on each of the days. The client agreed with the use of copies of the blank pre-signed forms and the funds being redeemed.

10. As to Allegation # 3 the Respondent did sign the names of clients but indicated only to accommodate friends who were not able to be in the Halifax area. Mr. McInnes gave one example that the Respondent signed the name of the son of a client who was in British Columbia.

11. Mr. McInnes emphasized that with respect to each of the three Allegations none of the clients complained, not one was adversely affected and no unlawful profit was made by the Respondent.

12. Since the Respondent was present he was given the opportunity to address the Panel. While he indicated that Mr. McInnes addressed the Allegations, he wanted the Panel to know that he was no longer in the Mutual Fund business, that he cooperated fully with the MFDA, and that he never at any time had any intent to deceive clients nor cheat in the handling of their accounts. He did act contrary to the MFDA Rules, but in one situation he was advised to obtain blank signed forms and in the other two the intent was to accommodate a client and friends.

13. Following this, the Panel indicated that it would reserve its decision and the Hearing came to an end.

14. The Panel met after the Hearing, discussed its role in a Settlement Hearing under Section 24 of MFDA By-law No. 1 and the rules of Business Conduct set forth in Rule 2, of the MFDA Rules.

15. The Respondent was an Approved Person within the industry and, as such, was bound by the MFDA Rules.

16. The first consideration is whether the Settlement Agreement should be accepted and, since the conduct set forth in the Settlement Agreement is of significant concern in this industry, the Panel is satisfied that the Settlement Agreement has properly taken into consideration those concerns. Therefore, the Panel accepts the Settlement Agreement after it also considered the usual aspects relating to the process a Panel must follow in doing so.

17. Clearly Staff who negotiated this Agreement were satisfied that the penalties set forth were commensurate with the conduct of the Respondent here.

18. But that is not enough for the Panel. Its considerations must be based upon the following considerations which have been set forth in many previous Settlement Hearings:

a) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalties imposed will protect investors;
b) Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
c) Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
d) Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
e) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian Capital Markets;
f) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA; and
g) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

See Settlement Hearing *Re: Rodney Jacobson*, MFDA Alberta Regional Council, File No. 200712 at page 9.

19. Staff provided the Panel with a Book of Authorities referring to 17 previous authorities out of 19 submissions relating to the above matters for consideration, as well as, the appropriateness of penalties. After perusing them we are satisfied that citing and referencing them is not necessary to support this Panel's duties relating to Settlement Hearings.

20. The Panel has considered the Settlement Agreement under the light of each of the foregoing considerations and concludes that this Settlement Agreement is in the public interest and the penalties imposed will protect investors and are reasonable having regard to the conduct of the Respondent.

21. The Panel is satisfied that the Settlement Agreement and penalties are completely in line with the MFDA's purpose to enhance investor protection and strengthen public confidence in the mutual fund industry by maintaining the importance of high standards of conduct.

22. The Settlement Agreement clearly meets the requirement of specific and general deterrence. It indicates that breaches of MFDA Rules, even in cases such as here, where there was no complaint about the actions, no prejudice suffered, and no benefits gained by the Respondent, carries significant consequences leading to suspensions or termination of a career and a substantial fine.

23. MFDA Members and Approved Persons are bound by and must now follow Rule 2 of the MFDA Rules because the Rules are created to enhance the mutual fund industry by establishing a high level of confidence in the integrity of Approved Persons and in the regulatory process, all to protect investors and further the public interest.

24. We indicate this only to impress upon those in the industry that if the Rules are not followed, the interests being protected far outweigh attempting to accommodate clients or friends and in the circumstances here there are procedures within the industry to meet these situations without breaching any Rules.

25. Having considered this Settlement Agreement in light of the foregoing, the Panel accepts the Settlement Agreement and in our opinion the one year prohibition to conduct securities related business in any capacity with any MFDA Member, together with a fine in the amount of $5,000.00 and a costs assessment of $2,500.00 is appropriate in the circumstances and in line with the reasonable range established in the decisions.

DATED this 16th day of January, 2014.

"D. Merlin Nunn"
The Hon. D. Merlin Nunn, Q.C.,
Chair

"Yves Duguay"
Yves Duguay,
Industry Representative

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