



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: Paul N. Orfali

Heard: September 29, 2016, in Toronto, Ontario
Reasons for Decision: January 19, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
David W. Kerr	Industry Representative
Robert C. White	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Paul N. Orfali)	By teleconference
)	
)	

1. The Hearing Panel accepted the settlement agreement dated September 6, 2016 (the “Settlement Agreement”) between the Mutual Fund Dealers Association of Canada (the “MFDA”) and Paul N. Orfali (the “Respondent”), a copy of which is attached as Schedule ‘1’ to these reasons.
2. The violations admitted to, the relevant law, and the pertinent facts and considerations taken into account in arriving at the penalty, are set out and explained in the Settlement Agreement.
3. The Respondent admitted that he, or his assistant for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of two (2) clients. In addition, the Respondent admitted that the Respondent's assistant, for whom he was responsible, altered and used to process transactions, three (3) account forms in respect of one (1) client.
4. The agreed penalties included a fine of \$2,500 and a two-month prohibition. In addition the Respondent agreed to pay costs of \$2,500.
5. Hearing panels have held that obtaining or using pre-signed account forms and that altering forms are contraventions of the standard of conduct under MFDA Rule 2.1.1.
6. Unlicensed assistants are often employed to provide administrative and other support to Approved Persons. Approved Persons are permitted to delegate certain administrative tasks to unlicensed assistants but remain responsible for the acts of the unlicensed assistants (See *Barak* (MFDA File No.201635)). The Respondent was responsible for the actions of his assistant.
7. The MFDA penalty guidelines for failure to adhere to the standard of conduct suggest, among other things, a minimum fine of \$5,000 and/or a suspension.

8. There was no evidence that the Respondent received any financial benefits from engaging in his misconduct, beyond usual commissions and fees, and no evidence of client harm. The Respondent has not previously been subject to MFDA disciplinary proceedings.

9. The agreed fine of \$2,500 is lower than the suggested minimum fine of \$5,000 for this type of rule violation as set out in the penalty guidelines, but with a two (2) month prohibition on conducting securities related business while in the employment of or associated with any member of the MFDA, the Panel believed that the fine was appropriate.

10. The agreed penalties were within the range of appropriateness in comparison with the precedent cases submitted to the Panel by MFDA Staff.

11. For the foregoing reasons, the Panel accepted the settlement agreement because it was in the public interest to do so.

DATED this 19th day of January, 2017.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“David W. Kerr”

David W. Kerr
Industry Representative

“Robert C. White”

Robert C. White
Industry Representative

Schedule “1”

Settlement Agreement

File No. 201614



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Re: Paul N. Orfali

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Paul Orfali, 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) the Respondent's assistant, for whom the Respondent was responsible, altered and used to process transactions, 3 account forms in respect of 1 client, contrary to MFDA Rule 2.1.1; and
- b) the Respondent, or his assistant for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of 2 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 \$2,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.1 of MFDA By-law No. 1;
- c) the Respondent shall be prohibited from conducting securities related business while in the employ of or associated with any Member of the MFDA for a period of 2 months pursuant to s. 24.1.1(e);
- d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- e) the Respondent will attend by teleconference 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 2002 to May 2016, the Respondent was 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. The Respondent was registered as a mutual fund salesperson in Quebec from February 2009 to May 2016.

9. At all material times, the Respondent was also licensed to sell life insurance and accident and sickness insurance with Industrial Alliance Insurance and Financial Services Inc. (“Industrial Alliance”), an insurance company licensed by the Financial Services Commission of Ontario.

10. At all material times, the Respondent conducted business in the Gloucester, Ontario area.

11. At all material times, the Respondent conducted business with the support of an assistant. The Respondent states that his assistant is no longer working at the branch.

Altered Forms

12. Between October 2012 and July 2013, the Respondent’s assistant, for whom the Respondent was responsible, used liquid correction fluid to change information on 3 Industrial Alliance Transfer Authorization forms in respect of 1 client (the “Altered Forms”).

13. The Respondent, or his assistant, submitted the Altered Forms to Industrial Alliance in order to process the transactions transferring mutual fund assets held by the client from Investia to Industrial Alliance.

14. The Respondent states that his assistant altered the Altered Forms.

15. The Respondent acknowledges that in the instances where he delegated certain administrative tasks to his assistant, he remains responsible for the actions of his assistant.

Pre-Signed Account Forms

16. Between October 2012 and July 2013, the Respondent, or his assistant for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 11 pre-signed Industrial Alliance Transfer Authorization forms in respect of 2 clients (the “Pre-Signed Forms”).

17. The Respondent, or his assistant, submitted 7 of the Pre-Signed Forms to Industrial Alliance in order to process the transactions transferring mutual fund assets held by the clients to Industrial Alliance.

Investia’s Investigation

18. Investia’s compliance staff detected the conduct that is the subject of this Settlement Agreement as a result of an audit of the Respondent’s files on September 10, 2013.

19. As part of its investigation, Investia reviewed an additional 223 of the Respondent’s 368 client files. Investia detected no other issues during this review.

20. In March 2014, Investia also sent letters to all of the clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading in their accounts. None of the clients reported any concerns to Investia.

21. On July 8, 2014, Investia issued a cautionary letter to the Respondent.

Additional Factors

22. There is no evidence the Respondent received any benefit from his misconduct beyond the commissions or fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
23. There is no evidence of client harm or lack of authorization.
24. The Respondent has not previously been the subject of any MFDA disciplinary proceedings.
25. The Respondent cooperated with Investia's investigation into his conduct.
26. 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 merits.

IV. ADDITIONAL TERMS OF SETTLEMENT

27. 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.
28. 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.
29. 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.

30. 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 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;
- 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.

31. 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.

32. 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.

33. 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 21st day of September, 2016.

“Paul N. Orfali”

Paul N. Orfali

“AF”

Witness – Signature

AF

Witness – Print Name

“Shaun Devlin”

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

Schedule “A”

Order

File No. 201614



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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 [Respondent] (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 between October 2012 and July 2013, the Respondent’s assistant, for whom he was responsible, altered and used to process transactions, 3 account forms in respect of 1 client; and, the Respondent, or his assistant, obtained, possessed, and in some instances, used to process transactions, 11 pre-signed account forms in respect of 2 clients;

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 \$2,500 pursuant to s.24.1.1(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$1,000 pursuant to section 24.2 of MFDA By-law No. 1;
3. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of 2 months pursuant to s.24.1.1(e) of MFDA By-law No. 1
4. The Respondent shall in future comply with MFDA Rule 2.1.1; and
5. 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]