



Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

**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: MD Sabab Alam

Heard: September 27, 2022 by electronic hearing in Calgary, Alberta

Decision: September 27, 2022

Reasons for Decision: February 9, 2023

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Robert Stack
Adam Dudley
Birju Shah

Chair
Industry Representative
Industry Representative

Appearances:

Peter Gilmore)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Jeremy Devereux)	Counsel for the Respondent
)	
)	
MD Sabab Alam)	Respondent
)	

I. BACKGROUND

1. On July 27, 2022, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing (the “Notice”) in relation to Mr. Sabab Alam (the “Respondent”). The Notice indicated that a hearing would take place on September 27th, 2022, (the “Hearing”). The purpose of the Hearing would be to determine whether a hearing panel of the Prairie Regional Council of the MFDA (the “Hearing Panel”) should accept, pursuant to s. 24.4 of By-law No. 1 of the MFDA, a settlement agreement entered into between staff of the MFDA (“Staff”) and the Respondent on August 10, 2022 (the “Settlement Agreement”).

2. The Hearing did take place as scheduled. It was held via video conference with the Respondent appearing remotely along with his counsel. At the commencement of the Hearing, Staff asked that the matter be heard *in camera* until such time as the Hearing Panel had decided whether to accept the Settlement Agreement. This order was given as per Rule of Procedure 15.2(2).

3. The Hearing Panel then did consider whether to accept the terms of the Settlement Agreement in light of the conduct described in the Settlement Agreement and the submissions of counsel for Staff and counsel for the Respondent.

II. ADMITTED FACTS

4. The Settlement Agreement set out the following facts admitted by the Respondent:

- a) The Respondent has been registered in Alberta as a dealing representative with a Member of the MFDA, Scotia Securities Inc. (the “Member”), since May 2019.
- b) The Respondent’s business activities were conducted from Calgary, Alberta.
- c) In late 2019, the Respondent received a telephone call from a client of the Member whose accounts the Respondent managed (“Client KK”). Client KK told the Respondent that his spouse (“Client SK”) wished to transfer her spousal Registered Retirement Savings Plan (“RRSP”) holdings to the Member (the “Transfer”).
- d) On or about February 6, 2020, the Transfer took place.
- e) Neither before nor at the time of the Transfer did either Client KK or Client SK provide any investment instructions regarding the transferred funds, nor did the Respondent make any recommendations.

- f) On or about February 11, 2020, without the prior knowledge or authorization of the Client SK, the Respondent processed a purchase of the Scotia Innova Growth Portfolio mutual fund in the amount of \$73,806.07 in Client SK's account (the "Purchase"). The Respondent states he believed Client SK would want to invest in this fund because it was similar to the investments she had held at another financial institution.
- g) Client SK had not signed documentation or provided instructions authorizing the Purchase. Despite this fact, on or about February 11, 2020, the Respondent filled out an Investment Direction Form that stated as follows:

Client [SK] instructed over the phone on 11/02/2020 at 10:00 am to transfer funds from Spousal RRSP cash into mutual fund Scotia Innova Growth Portfolio of \$73,806.07.

- h) After Client KK complained about the Purchase, Client SK instructed the Member to switch the holdings that she had acquired through the Purchase to another mutual fund. This transaction resulted in a loss of approximately \$14,631. The Member has fully compensated Client SK for this loss.
- i) At all material times, the Member's policies and procedures required its Approved Persons to obtain and maintain evidence of client authorization before executing trades in a client's account.

5. The Settlement Agreement also disclosed as follows:

- a) The Respondent admitted both to the lack of authorization for the Purchase and to recording of the false note when interviewed by Staff;
- b) the Respondent has not previously been subject to MFDA disciplinary proceedings; and
- c) the Settlement Agreement had saved the MFDA the time, resources and expenses associated with a contested hearing.

III. ADMITTED CONTRAVENTIONS

6. The Settlement Agreement contained the following admission of a contravention of By-Laws, Rules or Policies of the MFDA:

On or about February 11, 2020, the Respondent processed a trade in the account of a client without the client's authorization, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 2.3.1, and 1.1.2 (as it relates to Rule 2.5.1). (“Contravention”)

IV. PROPOSED PENALTIES

7. In the Settlement Agreement, Staff and the Respondent indicated they had agreed that the Contravention would attract the following consequences:

- a) The Respondent shall pay a fine in the amount of \$9,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) The Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- c) The payment by the Respondent of the fine and costs shall be made to and received by the MFDA in certified funds as follows:
 - \$3,500 (costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - \$1,500 (costs) on or before the last business day of the first month following the date of the Settlement Agreement;
 - \$2,000 (fine) on or before the last business day of the first month following the date of the Settlement Agreement;
 - \$3,500 (fine) on or before the last business day of the second month following the date of the Settlement Agreement; and
 - \$3,500 (fine) on or before the last business day of the third month following the date of the Settlement Agreement;

8. The Respondent also agreed that he would in the future comply with Rules 2.1.1, 2.3.1, and 1.1.2 (as it relates to Rule 2.5.1).

V. ROLE OF PANEL WHERE THERE IS AGREEMENT AS TO SANCTION

9. When a settlement agreement has been referred to it under By-law 1 s. 24.4.3, an MFDA hearing panel is required to either accept or reject the agreement. Pursuant to considerable authority from MFDA panels, a hearing panel reviewing an agreed set of sanctions is not to determine what the correct penalty is or what it thinks the penalty should be. Rather, its role is to determine whether the penalty to which the parties have agreed is within a reasonable range of outcomes.

Sterling Mutuals Inc. (Re), Hearing Panel of the Central Regional Council, File No. 200820, Decision and Reasons dated September 3, 2008 at p. 9.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999 at p. 10.

10. In considering whether a proposed penalty is in a reasonable range, MFDA panels have considered factors such as the following:

- a) the seriousness of the allegations proved against the Respondent;
- b) the Respondent's past conduct, including prior sanctions;
- c) the Respondent's experience and level of activity in the capital markets;
- d) whether the Respondent recognizes the seriousness of the improper activity;
- e) the harm suffered by investors as a result of the Respondent's activities;
- f) the benefits received by the Respondent as a result of the improper activity;
- g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) previous decisions made in similar circumstances.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999 at p. 25.

Laverdiere (Re), [2010] Hearing Panel of the Pacific Regional Council, MFDA File No. 200936, Panel Decision dated May 12, 2010, at para. 22

11. The *MFDA Sanction Guidelines* set out a similar list of considerations.

12. In relation to these factors, the Hearing Panel note that unauthorized, discretionary trading is a serious infringement of the *MFDA Rules*, and the creation of the false record to disguise the Contravention is an aggravating factor. However, at the time of the Contravention, the Respondent had limited experience in the investment industry and he has no prior history of infractions; further, he recognized the seriousness of his conduct by making an early admission to the MFDA and

entering into the Settlement Agreement. While the investor in question suffered a loss, the Member did provide compensation.

13. In terms of consistency with previous decisions made in similar circumstances, Staff presented several authorities. We find that the proposed penalties in this case are broadly consistent with those decisions. The Hearing Panel makes particular reference to the following cases:

- a) *Sunkara (Re)*, [2021] Hearing Panel of the Pacific Regional Council, MFDA File No. 202142, Panel Decision dated November 10, 2021
 - The respondent opened an account for a client and processed transactions without authorization; the respondent also completed out Know-Your-Client forms without communication with the client;
 - the respondent was 25 years old at the time and reversed the unauthorized trade; no harm to the client resulted from the misconduct; and
 - a settlement of \$7,500 in fines and \$2,500 in costs was approved.
- b) *Wallace (Re)*, [2016] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201683, Panel Decision dated January 13, 2017
 - The respondent conducted three unauthorized trades in a client account;
 - The amount traded was small, the respondent made no gain from the misconduct and the respondent had no disciplinary history; and
 - A settlement of \$7,500 in fines and \$2,500 in costs was approved.
- c) *Mahendran (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201911, Panel Decision dated June 20, 2019
 - The respondent redeemed funds from an RRSP account without client authorization (although the respondent did so under the impression she had instructions from a relative of the client);
 - The respondent was 22 years old at the time of the infraction, had no prior disciplinary history and did not benefit from the trades;
 - At the time of the hearing, the respondent was no longer registered in the industry and had limited means to satisfy a fine;
 - A proposed sanction of \$10,000 in fines and \$2,500 in costs was accepted.

VI. ACCEPTANCE AND ORDER

14. In light of all of the above, the Hearing Panel accepted the Settlement Agreement. The Hearing was then made again open to the public and the Settlement Agreement was marked as an exhibit. An order approving the Settlement Agreement was subsequently signed.

DATED this 9th day of February, 2023.

“Robert J. Stack”

Robert J. Stack
Chair

“Adam Dudley”

Adam Dudley
Industry Representative

“Birju Shah”

Birju Shah
Industry Representative

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