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: Risa Dee Andersen

Heard: December 10, 2018 in Toronto, Ontario
Decision: December 10, 2018
Reasons for Decision: April 25, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall, QC	Chair
Linda J. Anderson	Industry Representative
Matthew Prew	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Uri Snir	)	Counsel for the Respondent
Risa Dee Andersen	)	Respondent, in person

I. INTRODUCTION

1. By Notice of Settlement Hearing dated November 21, 2018, a hearing panel of the Central Region of the Mutual Fund Dealers Association of Canada ("MFDA") was convened on December 10, 2018 to consider whether, pursuant to Section 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept the Settlement Agreement dated December 4, 2018 ("Settlement Agreement") entered into between Staff of the MFDA and Risa Dee Andersen ("Respondent").

2. The Notice of Settlement Hearing set out the following allegations of violations by the Respondent of the By-laws, Rules or Policies of the MFDA, specifically that she:

a) Between April 2014 and June 2017, had and continued in outside business activities which were not disclosed to and approved by the Member, contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c) (now 1.3.2)[1], 2.1.1, and 2.5.1 and 1.1.2;

b) Between August 13, 2014 and June 1, 2017, referred at least four clients and five individuals to purchase insurance products for which the Respondent received referral fees, contrary to the Member's policies and procedures, sections 13.7 to 13.10 of National Instrument 31-103, and MFDA Rules 2.1.1, 2.4.2, and 2.5.1 and 1.1.2;

c) Between April 2014 and June 2017, conducted business of the Member using an unapproved trade name, contrary to the Member's policies and procedures and MFDA Rules 1.1.7(c), 2.5.1, 1.1.2, and 2.1.1;

d) From at least December 5, 2014 to June 2017, issued unapproved advertisements and established a website, contrary to the Member's policies and procedures and MFDA Rules 2.7.3, 2.5.1, 1.1.2, and 2.1.1;

e) In March 2017 and May 2017, attached a copy of signature pages from account forms previously signed by clients to 14 new account forms to process transactions in respect of three clients, contrary to MFDA Rule 2.1.1;

[1] On March 14, 2016, Rule 1.2.1(c) was revised and renumbered as Rule 1.3.2.

f) On February 24, 2017, altered and used one account form to process a transaction without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and

g) On or about March 15, 2017, used an unauthorized email account to communicate with a client, contrary to the Member's policies and procedures and MFDA Rules 2.5.1, 1.1.2, and 2.1.1.

3. By the terms of paragraph 4 of the Settlement Agreement, the Respondent admits to each of the violations of the By-laws, Rules or Policies of the MFDA set out in the foregoing paragraph 2.

4. In paragraph 5 of the Settlement Agreement, the Respondent agreed and consented to the following terms of settlement:

a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ or associated with any MFDA Member for a period of 6 months from the date the Settlement Agreement is accepted pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

b) The Respondent shall pay a fine in the amount of $25,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:

(i) $2,500, in certified funds upon acceptance of the Settlement Agreement;

(ii) $3,750, on or before the last business day of the first month following the acceptance of the Settlement Agreement;

(iii) $3,750, on or before the last business day of the second month following the acceptance of the Settlement Agreement;

(iv) $3,750, on or before the last business day of the third month following the acceptance of the Settlement Agreement;

(v) $3,750, on or before the last business day of the fourth month following the acceptance of the Settlement Agreement;

(vi) $3,750, on or before the last business day of the fifth month following the acceptance of the Settlement Agreement;

(vii) $3,750, on or before the last business day of the sixth month following the acceptance of the Settlement Agreement;

c) The Respondent shall pay costs in the amount of $2,500, in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;

d) The Respondent shall in the future comply with MFDA Rules 1.1.7(c), 1.3.2, 2.1.1, 2.1.4, 2.4.2, 2.7.3, and 2.5.1 and 1.1.2 and ss. 13.7 to 13.10 of National Instrument 31-103; and

e) The Respondent will attend in person on the date of the Settlement Hearing.

5. By paragraph 6 of the Settlement Agreement, Staff and the Respondent agreed to the settlement on the basis of the facts set out in Part III of the Settlement Agreement as well as agreeing to the form of an order attached as Schedule A to the Settlement Agreement.

II. SETTLEMENT AGREEMENT AND AGREED FACTS

6. The portions of the Agreed Facts which were relevant to the Hearing Panel's consideration of the appropriateness of the Settlement Agreement and whether it should be accepted are as follows:

III. AGREED FACTS

Registration History

7. From February 27, 2014 to October 3, 2017, the Respondent was registered as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life"), a Member of the MFDA.

8. On October 3, 2017, Sun Life terminated the Respondent's registration, and she is not currently registered in the securities industry in any capacity.

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

Unapproved outside business activities

10. At all material times, Sun Life's policies and procedures prohibited Approved Persons from engaging in any business or occupation other than acting as an advisor for Sun Life, without its written consent.

11. At all material times, Sun Life's policies and procedures prohibited Approved Persons from preparing client income tax returns, whether or not a fee is being charged.

12. In 2014, 2015, and 2016, the Respondent advised Sun Life during annual on-site inspection visits that she did not engage in any outside business activities.

13. While registered with Sun Life, the Respondent obtained approval to sell life insurance through Sun Life Financial Distributors (Canada) Inc.

14. Without disclosing to and obtaining prior approval from Sun Life, the Respondent carried on outside business activities as described below.

i. Wedding financial planning and financial coaching services

15. Between April 2014 and June 2017, the Respondent offered wedding financial planning and financial coaching services using the trade name "Financial Diva". Under the Financial Diva trade name, the Respondent offered advice concerning budgeting, saving, and registered savings plans. The Respondent also offered services as a wedding financial planner.

16. From at least December 5, 2014 to June 2017, the Respondent advertised her wedding financial planning and financial coaching services carried on under the name Financial Diva on internet websites.

17. The Respondent operated the website http://www.thefinancialdiva.ca on which the Respondent offered financial planning services, including advice on the use of Registered Educational Savings Plans, Registered Retirement Savings Plans, and Tax Free Savings Accounts. The Respondent described her services, in part, as follows:

> As a financial professional that has worked many years with young couples, I have learned that there are many questions that need answering.
>
> For example:
>
> - How much should allocate [*sic*] to my RESP account?
> - What about life insurance, should I start young or should I wait?
> - Should I pay down my debt first or start saving?
> - What is the best time to start saving/
> - I need to simplify my budget is there a way that I can do that?
>
> Basically, there are many financial questions that you have and many options that apply to each one. I make it my personal mission in life to take care of these things for you. But at the same time I like to make you completely aware of how your money can work for you rather than against you. I would love to be able to walk you through a scenario to help you make better decisions that fits you, your family and your lifestyle.

> It won't take long to discuss the options with you, and there is never any charge for the consultation. Are you ready to book a no obligation appointment?

18. On a second website <http://www.theweddingring.ca/the-financial-diva/>, which was a wedding planning magazine website operated by a third party, the Respondent advertised her services as a financial advisor for couples saving and budgeting for their wedding. The "review" that promoted the Respondent's business contained the Sun Life logo, and described services offered by the Respondent, in part, as follows:

> As a financial advisor, [the Respondent] is licensed in all aspects of insurance and savings plans. As the Financial Diva, [the Respondent] has been helping clients since 2002. Not only does she help couple's [*sic*] determine a realistic wedding budget, she also helps them determine a plan to ensure the cash is readily available on their wedding day, so they can avoid incurring debt.

19. In addition to the two above referenced websites, the Respondent's Financial Diva business was listed on the website http://www.bridalconfidential.com/businesses/sun-life-financial-risa-andersen/ . The contact information for the Respondent on this website included the Respondent's Sun Life phone number.

20. The Respondent used the financial planning services as a means to solicit prospective clients.

ii. Tax preparation

21. The Respondent completed income tax returns in 2015 and 2016 for two clients of Sun Life, clients MM and AM, who were spouses, and one other individual.

Undisclosed referral arrangement

22. At all material times, Sun Life's policies and procedures prohibited Approved Persons from engaging in referral arrangements, unless there was a formal agreement with Sun Life, disclosure was provided to clients, and Sun Life recorded the referral fees on its books and records.

23. From August 13, 2014 to June 1, 2017, the Respondent held a position with a third party insurance broker, M&R, as a personal and commercial lines broker. The Respondent maintained her license to sell property and casualty insurance.

24. During this time, the Respondent provided quotes, processed or facilitated the processing of applications, and referred clients and others for property and casualty insurance, for which she earned referral fees in the amount of $21,000.

25. At no time did the Respondent disclose to or obtain approval from Sun Life to sell property and casualty insurance.

26. Sun Life had no referral arrangement with M&R, and did not record the referral fees on its books and records.

27. The Respondent did not provide disclosure of the referral arrangement she had with M&R to those clients she referred to M&R to purchase insurance.

28. At all material times, Sun Life's policies and procedures required that all marketing materials be approved by head office.

29. At all material times, Sun Life prohibited its Approved Persons from establishing non-Sun Life websites.

30. As described above at paragraph 17, the Respondent established a non-Sun Life website for her business carried on under the Financial Diva name.

31. The Respondent did not disclose to or obtain approval from Sun Life prior to advertising her services on the websites described above at paragraphs 17 to 19.

32. By promoting investment related services offered by the Respondent, and promoting the business of the Member, the advertisements constituted an "advertisement" within the meaning of MFDA Rule 2.7.1(a).

Re-used signature pages

33. At all material times, Sun Life's policies and procedures prohibited Approved Persons from re-using signature pages from previously signed account forms, and stated that all forms must be duly executed after all information on a form has been properly completed.

34. In March 2017 and May 2017, the Respondent attached photocopied or scanned signature pages from account forms previously signed by clients to 14 new account forms to process transactions in respect of 3 clients.

35. The re-used forms consisted of transfer authorizations.

Altered account forms

36. At all material times, Sun Life's policies and procedures prohibited Approved Persons from obtaining and using altered account forms, and stated that all forms must be duly executed after all information on a form has been properly completed.

37. On February 24, 2017, the Respondent altered and used 1 account form to process a transaction without having the client initial the alterations.

38. The altered account form consisted of a mutual fund application form.

Unauthorized email accounts

39. At all material times, Sun Life's policies and procedures required Approved Persons to use Sun Life's electronic system for electronic communications with clients.

40. On March 15, 2017, the Respondent used a non-Sun Life email account to communicate with a client concerning investment in the client's TFSA.

Sun Life's investigation

41. On July 5, 2017, following the discovery of the Respondent's outside conduct described above, Sun Life placed the Respondent under close supervision.

42. On or around September 29, 2017, Sun Life sent a letter to all clients serviced by the Respondent to audit the Respondent's conduct. The letter requested that clients confirm their authorization for transactions in their mutual fund account(s); confirm their KYC information; and advise whether the Respondent ever provided income tax return services, home or auto insurance services, and/or "other" services.

43. No clients reported any concerns to Sun Life concerning the status of their accounts or Know Your Client information. Based on responses from 4 clients, Sun Life determined that the Respondent had sold home or auto insurance services contrary to its policies and procedures as described above.

44. On October 3, 2017, Sun Life terminated the Respondent's registration for the matters described above.

Additional factors

45. Other than the referral arrangement with M&R, there is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he [*sic*] would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

46. There is no evidence of any client loss or that the transactions processed using the altered account forms and re-used signature pages were unauthorized.

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

48. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducing [*sic*] a full hearing of the allegations.

III. REASONS AND ANALYSIS

7. It is now well established that the test to be applied by a hearing panel in deciding whether to accept or reject an agreed settlement is quite different than that which is utilized when hearing a contested case. In the latter case, the hearing panel is charged with making a determination whether there has been a breach of the applicable rules, by-laws or statutes. Instead of such a determination on the merits, a hearing panel sitting on a settlement application is directed to decide whether a settlement agreement which contains the terms of the settlement and statement of facts, is "acceptable".

8. Section 24.4.3 of MFDA By-Law No. 1 provides that hearing panels may only accept or reject a settlement in its entirety. A hearing panel's role is not to determine if the sanction or sanctions agreed to are correct, but instead to ascertain whether what has been agreed to falls within "a reasonable range of appropriateness".

9. In *Professional Investment (Kingston) Inc. (Re)*, the Hearing Panel aptly described its role as follows:

> In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. **In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.** As has been said: "The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made.
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> MFDA By-law No. 1
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> *Professional Investments (Kingston) Inc. (Re),* 2009 LNCMFDA 9 at para. 13. [Emphasis added.]
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> *Ho (Re),* 2018 LNCMFDA 21 at paras. 24-26.

10. Settlements play an important and necessary role in facilitating the MFDA's principal goal of protecting the investing public. An administrative tribunal cannot adjudicate every matter that comes before it. Settlements provide an efficient and effective way for the MFDA to proscribe

conduct that is harmful to the public, while providing a flexible remedy that can be tailored to address the interests of Staff and respondents:

> But the power to settle, I find, is necessary if the Commission is going to carry out its purpose under s. 4(2) and its enforcement mandate under ss. 161 and 162 in an effective and efficient manner. Administrative tribunals do not and can not [*sic*] adjudicate on every matter that commences before them.
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> Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing.
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> *British Columbia (Securities Commission) v. Seifert,* [2006] B.C.J. No. 225 at paras. 48-49 (S.C.), aff'd [2007] B.C.J. No. 2186 at para. 31 (C.A.).

11. Instead of the Hearing Panel's analysis being directed at coming to the correct decision, the analysis is, in effect, directed at determining how others would view the appropriateness of the settlement.

12. What a MFDA Hearing Panel is doing in deciding whether to accept a particular settlement is to decide what the imaginary average participant in the industry, each with an adequate knowledge of the facts, would think of the settlement. Would such a person consider that the settlement, viewed objectively, was not far out of line with the sanction that would be expected for the transgression? If this notional average participant would think it was too lenient, then it would not provide an adequate general deterrent. Equally, a result which is regarded as disproportionately severe is likely to be regarded as an aberration and discounted.

13. Perhaps the most important measuring stick when determining the appropriateness of a particular settlement is how the result compares to previously decided similar cases. If there is a significant departure from dispositions in similar cases, the general deterrence value of the result will be lessened. The hearing panel's task is to decide whether the average industry participant or

observer would find the result inappropriate. If so, the settlement would fall outside a range of reasonable appropriateness and should not be accepted.

14. For some period of time past the Sanction Guidelines issued by the MFDA ("Sanction Guidelines") provided, among other guidance, non-binding recommendations of ranges of sanctions, including quantum of fines and length of suspensions, for use by hearing panels. Obviously such guidance was particularly helpful to hearing panels when assessing whether the agreed settlement fell within a zone of reasonable appropriateness.

15. The Sanction Guidelines were revised effective November 15, 2018. The expressed purpose of the revision was "(T)o adopt a more principles-based approach to sanctioning and to move away from the recommendation of specific fine amounts and penalties"[2]. The new Sanction Guidelines implement the proposed change and make no mention of recommended sanctions, leaving it up to hearing panels to obtain the needed guidance from the decided cases as well as from the submissions of the parties. It was thought that the case law is sufficiently mature that those concerned should be guided directly by the results in previously decided cases rather than by the MFDA.

16. As stated above, the primary goal of securities regulation is the protection of the investing public. Disciplinary sanctions imposed in a securities regulatory context are protective and preventative, intended to be exercised to prevent likely future harm.

> *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 S.C.R. 557 at para. 59.
>
> *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission*), [2001] 2 S.C.R. 132 at para. 42.

17. In the Notice of Settlement Hearing (paragraph 2 above) and admitted in paragraph 4 of the Settlement Agreement, the acts of misconduct are described in detail. For purposes of this discussion, the allegations may be summarized as follows:

a) Unapproved Outside Activities

[2] MFDA Bulletin #0762 – P, October 31, 2018

b) Undisclosed Referral Arrangement

c) Unapproved Trade Name

d) Unapproved Advertisements and Website

e) Re-used Signature Pages From Account Forms

f) Altered and Used Account Forms

g) Use of Unauthorized Email Account

18. By way of preliminary comment, the Hearing Panel was unable to give much, if any, weight to the unauthorized use of an email account. The use of such an email, while admitted in the settlement agreement, is before the Hearing Panel bereft of factual background, other than it was a single event. We do not have any information as to the reason why it was used and whether there was any harm to the client. Consequently, the Hearing Panel does not think it would be appropriate to give weight to it in conducting the analysis of whether the settlement was acceptable.

19. The Hearing Panel decided it should not include the matter of the preparation of income tax returns in its acceptability analysis at all. In the first place there is no allegation in the Notice of Settlement Hearing relating to the subject. Secondly, two of those who had the income taxes prepared were identified as existing clients and the third was unidentified. If all were existing clients, it is unlikely that the work was done to solicit prospective clients as was asserted in the Settlement Agreement at paragraph 20 and relied upon by Staff in his oral submissions.

20. It also needs to be said that these two matters pale into insignificance when compared to the other matters for which the Respondent has acknowledged breaches of the By-laws, Rules and Policies of the MFDA and which are set out in sub paragraphs (a) to (f) of paragraph 17 above. These matters are of two general types. The first group, (a) to (d), are regulations designed to ensure that the Member is made aware of what the Approved Person is doing in the course of his or her business. The objective of these regulations is to ensure the investor/participant/client is protected by the "closed system" which requires that all finance related business, widely defined, is conducted through the facilities, and under the supervision of a Member of the MFDA.

(a) Unapproved Outside Activities

21. Former MFDA Rule 1.2.1(c) (now MFDA Rule 1.3.2), requires all Approved Persons to disclose outside activities and obtain prior approval from their Member. In *Wemple (Re),* the Hearing Panel identified some of the concerns that arise when an Approved Person fails to disclose an outside activity, including that it prevents the Member from:

a) Ensuring the applicable securities legislation, the Member's own regulatory obligations, and the member's own internal procedures are complied with;
b) Assessing whether the MFDA, its members, or the mutual fund industry are being brought into disrepute;
c) Ensuring that clients and the general public are aware that the outside business activity is not the business or responsibility of the member; and
d) Appropriately addressing any actual or potential conflicts of interest.

Former MFDA Rule 1.2.1(c)
MFDA Rule 1.3.2
Wemple (Re), 2017 LNCMFDA 138 at paras. 27-28

22. Accordingly, by engaging in the wedding financial planning and financial coaching as the "Financial Diva", and completing income tax returns, the Respondent contravened the member's policies and procedures and former MFDA Rule 1.2.1(c) (now MFDA Rule 1.3.2).

(b) Undisclosed Referral Arrangement

23. The Respondent admitted that from August 13, 2014 to June 1, 2017, she referred clients for property and casualty insurance to a third party insurance broker, for which she earned $21,000 in referral fees.

24. MFDA Rule 2.4.2 and sections 13.7 to 13.10 of National Instrument 31-103 require that all referral arrangements be conducted through and with the approval of the member. The Member is required to record all referral fees, and both the member and the Approved Person must ensure that the clients being referred receive written disclosure as required by MFDA Rule 2.4.2(d)(i) (section 13.10 of the National Instrument).

25. Accordingly, Sun Life's policies and procedures prohibited Approved Persons from engaging in referral arrangements, unless there was a formal agreement with Sun Life, disclosure was provided to clients, and Sun Life recorded the referral fee on its books and records.

26. The Respondent did not disclose the referral arrangement or obtain approval from Sun Life. In addition, the Respondent did not take the steps necessary to ensure full disclosure to those clients that she referred.

27. As a result, clients were not provided sufficient information regarding the potential and/or actual conflicts of interest, including the fees that were being paid to the Respondent. The Member further could not take steps to protect clients by overseeing the products that the Respondent was referring to clients and others.

Wemple (Re), supra at para. 18.
Monforton (Re), 2017 LNCMFDA 23 at para. 9.

28. By engaging in the referral arrangement with the third party insurance broker without taking the necessary steps to proceed with the approval of and through Sun Life, the Respondent contravened the Members policies and procedures, sections 13.7 to 13.10 of National Instrument 31-103 and MFDA Rule 2.4.2.

(c) and (d) Unapproved Trade Name, Advertisements, and Website

29. The Respondent has admitted that her financial coaching services, discussed above, included Member business, namely providing advice concerning registered savings plans. The Respondent offered these services using the unapproved trade name, the "Financial Diva" and she promoted her services using an unapproved website and unapproved advertisements.

30. MFDA Rule 1.1.7(c) requires the Approved Persons obtain **prior** written consent from the Member before conducting the business of the Member under a trade name (among other requirements). MFDA Rule 2.7.3 further requires that the Member approve all advertisements before they are issued.

MFDA Rules 1.1.7 and 2.7

31. By failing to obtain Member approval of her trade name and advertisements, the Respondent undermined the "closed system", which ensures that all securities related business is conducted through the facilities, and under the supervision, of a Member of the MFDA. As discussed above, this supports a key facet of the investor protection regime in that it ensures that all interactions between the participants in the mutual fund industry and investors/clients are subject to review and supervision by the Member.

32. MFDA Rule 1.1.7 protects investors by ensuring that the public knows that it is dealing with the Member when conducting business with an Approved Person using a trade name, and accordingly has recourse to the Member and ultimately the MFDA if any concerns arise. MFDA Rule 2.7.3 protects investors by ensuring that all advertisements are first subject to Member scrutiny to ensure they are fair and not misleading as required by MFDA Rule 2.7.2.

MFDA Rules 1.1.7 and 2.7

33. Indeed, Sun Life's policies and procedures expressly required that all marketing materials be approved by head office and expressly prohibited Approved Persons from establishing non-Sun life websites.

(a) and (f) Re-used and Altered Forms

34. The Respondent used signature pages from previously signed account forms to process new transactions and altered an account form without having the client initial the alterations. Hearing Panels have repeatedly and consistently found such activity to constitute a serious contravention of the standard of conduct under MFDA Rule 2.1.1.

Pollon (Re), 2018 LNCMFDA 54 at para. 40; *Garofalo (Re),* 2016 LNCMFDA 119 at para. 7
Owen (Re), 2017 LNCMFDA 287 at paras. 31-34.

35. The standard of conduct codified by MFDA Rule 2.1.1 requires that Members and Approved persons deal fairly, honestly, and in good faith with clients; to observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. The Rule is central

to the MFDA mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

> MFDA Rule 2.1.1.
>
> *Breckenridge (Re),* 2007 LNCMFDA 38 para. 71

36. Re-using signature pages from previously signed forms and altering forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation. The reasoning of the Hearing Panel in *Price (Re)* regarding the prohibition against pre-signed forms applies equally to re-using signature pages and altering forms:

> Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading…At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client…Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.
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> *Price (Re),* 2011 CanLII 72458 at paras. 122-124 (MFDA)
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> *Pollon (Re), supra* at para. 41
>
> *Owen (Re), supra* at para. 33; *Lewis (Re), supra* at para. 30.

The Sanction

37. As previously stated, the primary goal of securities regulation is the protection of the investing public. Disciplinary sanctions imposed in a securities regulatory context are protective and preventative, intended to be exercised to prevent likely future harm.

> *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 S.C.R. 557 at para. 59.
>
> *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission),* [2001] 2 S.C.R. 132 at para. 42.

38. Hearing Panels have taken into account the following factors when evaluating whether the penalties proposed should be accepted. Many of these factors have now been incorporated in the new Sanction Guidelines:

a) The seriousness of the contraventions admitted to by the Respondent or 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.

Sterling Mutuals Inc. (Re), 2016 LNCMFDA 77 at para.14.

Seriousness of the Misconduct

39. As discussed above, the Respondent's misconduct undermined the Member's ability to appropriately supervise the Respondent and undermined several elements of investor protection intended by the MFDA Rules. MFDA Hearing Panels have repeatedly found engaging in undisclosed and unapproved outside business activities and referral arrangements to constitute serious misconduct.

Wemple (Re), supra at para. 25.

Monforton (Re), supra at para. 12.

40. The Respondent's misconduct was further aggravated by the concealment of her outside business activities. Over a four year period, the Respondent falsely advised Sun Life during annual on-site inspection visits that she did not engage in any outside business activities.

41. Re-using and altering account forms is also serious misconduct. The re-use of previously signed account forms is particularly concerning, as it undermines the reliability of the client signature. The authenticity of client signatures is one of the foundations upon which client trust is established and client instructions are carried out.

Pollon (Re), supra at para. 42.
Owen (Re), supra at para. 34.
Garofalo (Re), supra at para 8.

Factors Favourable to Respondent

42. The Respondent fully cooperated with Staff and by entering into the Settlement Agreement has saved the MFDA from the expense of money and time necessary to prosecute a contested proceeding.

43. Further, as was agreed as a term of the Settlement Agreement, the Respondent attended in person for the settlement hearing. As well, she was represented by counsel who made a helpful contribution to the proceedings.

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

45. Staff is satisfied that the Respondent recognizes the seriousness of her misconduct. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her actions and avoided the time and expense of a full disciplinary hearing.

46. Other than the $21,000 earned from the referral arrangement, there is no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond any commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

47. There is no evidence that the Respondent's clients or any other individuals suffered any harm as a result of the Respondent's misconduct. There is also no evidence that any of the transactions processed using the altered forms and re-used signature pages were unauthorized.

48. The proposed sanctions of a 6-month prohibition and a fine of $25,000 serve the purpose of specific and general deterrence. The sanction is preventative because it keeps the Respondent out of the industry for a further significant time, and it will discourage the Respondent from similar wrongdoing in the future should she return to the industry.

49. Concerning general deterrence, a 6 month prohibition and $25,000 fine, together with $2,500 costs, undoubtedly sends a strong message to others in the capital markets that Approved Persons who act in ways that are incompatible with MFDA's By-law, Rules, and Policies will be held accountable. The prohibition in particular carries a strong message as it greatly affects an Approved Person's income immediately because of the financial loss caused during the term of the prohibition.

50. Finally, the proposed sanction reinforces general deterrence and public confidence in the Canadian mutual fund industry by ensuring the Respondent does not benefit from her misconduct. The amount of the fine exceeds the Respondent's gain from the unauthorized referral arrangement.

MFDA Sanction Guidelines, pp. 3-4.

Previous Decisions Made in Similar Cases

51. The proposed penalties are within the reasonable range of appropriateness with regard to other decisions by MFDA hearing panels in similar circumstances. Staff provided the following summary of cases which have similarities to the present case:

Case	Facts	Penalties
Lewis (Re)	Respondent altered 3 account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1. Respondent altered 17 previously signed account forms to process new transactions, contrary to MFDA Rule 2.1.1.	The Hearing Panel accepted the following settlement: • $20,000 fine in instalments • $2,500 costs

Case	Facts	Penalties
	Respondent obtained, possessed, and, in some instances, used to process transactions, 51 pre-signed account forms, contrary to MFDA Rule 2.1.1.	
Stemshorn-Russel (Re)[3]	Respondent cut and pasted client signatures from account forms previously signed by two clients, onto two new account forms, contrary to MFDA Rule 2.1.1.	The Hearing Panel approved the settlement agreement with the following terms: • 6-month prohibition • $12,000 fine • $2,500 costs
Monforton (Re)[4]	Respondent referred at least 8 clients and 12 individuals to a mortgage broker to invest in syndicated mortgage products and received at least $10,400 in referral fees, thereby participating in a referral arrangement that did not comply with MFDA rules and National Instrument 31-103.	The Hearing Panel approved the settlement agreement with the following terms: • 6-month prohibition • $12,000 fine • $2,500 costs
Abate (Re)[5]	Respondent engaged in another gainful occupation that was not disclosed to and approved by the Member by selling, recommending, referring or facilitating the sale of $2 million of shares of a private company owned or controlled in part by the Respondent to a foreign pension fund, contrary to MFDA Rules 1.2.1(d) [now (c)] and 2.1.1. There was no evidence of client loss.	The Hearing Panel ordered the following sanction after a contested hearing: • 6-month prohibition • $15,000 fine • $5,000 costs
Rajpal (Re)[6]	Between July 2010 and November 2010, he referred at least two clients to a company that sold mortgage investment products and received $2,500 in referral fees for doing so, thereby participating in a referral arrangement to which the Member was not a party and which did not otherwise comply with sections 13.7 and 13.8 of National Instrument 31-103.	The Hearing Panel approved the settlement agreement with the following terms: • 3-month suspension • $5,000 fine • $2,500 costs

[3] *Stemshorn-Russel (Re),* 2018 LNCMFDA 6.
[4] *Monforton (Re), supra.*
[5] *Abate (Re),* 2015 LNCMFDA 105.
[6] *Rajpal (Re),* 2015 LNCMFDA 36.

Case	Facts	Penalties
Cronin (Re)[7]	Between January 11, 2002 and November 8, 2011, the Respondent had and continued in another gainful occupation that was disclosed to and approved by the two Members with which he was registered in succession by arranging private loans and mortgages for third party borrowers and lenders, which included borrowing from clients, contrary to MFDA Rules 1.2.1(c) and 2.1.1.	The Hearing Panel approved the settlement agreement with the following terms: • 10-year prohibition • $10,000 fine • $2,500 costs
Dhindsa (Re)[8]	Respondent had and continued in other gainful occupations that were not disclosed to and approved by the Member by acting as a director and officer of several corporations, contrary to MFDA Rules 1.2.1(d) and 2.1.1. Respondent contravened the member's policies and procedures by failing to disclose and not obtain approval for outside business activities, contrary to MFDA Rules 1.1.2 and 2.5.1.	The Hearing Panel ordered the following sanction after an uncontested hearing: • Permanent prohibition • $15,000 fine • $5,000 costs

52. The Hearing Panel found the summary very useful in reaching the conclusion that the agreed sanctions fall into a zone of reasonable appropriateness.

[7] *Cronin (Re),* 2015 LNCMFDA 9.
[8] *Dhindsa (Re),* 2012 LNCMFDA 38.

IV. CONCLUSION

53. It was for the foregoing reasons that the Hearing Panel on December 10, 2018 accepted the Settlement Agreement and issued the order to that effect.

DATED this 25th day of April, 2019.

"John Lorn McDougall"
John Lorn McDougall, QC
Chair

"Linda J. Anderson"
Linda J. Anderson
Industry Representative

"Matthew Prew"
Matthew Prew
Industry Representative

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