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: Avtar Singh Badasha

Heard: April 17, 2015, in Vancouver, British Columbia
Reasons for Decision: June 9, 2015

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. Thomas R. Braidwood, Q.C.	Chair
Liz Chichka	Industry Representative
Elaine Davison	Industry Representative

Appearances:

David Babin	)	For the Mutual Fund Dealers Association of Canada
Shaun T. Frost	)	For the Respondent

1. This hearing has been constituted pursuant to Section 24.4 of By-law No. 1. A hearing panel of the Pacific Regional Council (the "Hearing Panel") of the Mutual Fund Dealers Association of Canada (the "MFDA") has convened in order to determine whether or not the settlement agreement (the "Settlement Agreement") between the parties should be accepted and approved.

CONTRAVENTIONS

2. Between July 1, 2012 and September 30, 2012, Avtar Singh Badasha (the "Respondent") allowed AP, an unregistered individual, to open new accounts at the Member for 16 individuals with whom the Respondent never met, thereby:

a) failing to ensure that he performed the necessary due diligence to learn the essential facts relative to each client for whom an account was opened, contrary to MFDA Rules 2.2.1(a) and 2.1.1; and
b) failing in his capacity as a branch manager to ensure that business conducted at the branch was in compliance with MFDA By-laws, Rules and applicable legislation, and to supervise the opening of new accounts at the Member's branch office, contrary to MFDA Rules 2.5.5(f)(i) and (ii).

3. Between September 2001 and December 2013, the Respondent engaged in conduct unbecoming an Approved Person by:

a) obtaining, maintaining and using approximately seven blank signed forms in the accounts of four clients;
b) securing client signatures on account documentation for eight client accounts by sending only the signature pages to six clients; and
c) changing the dates on two client account forms that were faxed by one client, contrary to MFDA Rule 2.1.1.

TERMS OF SETTLEMENT

4. Pursuant to the terms of the Settlement Agreement, the following penalties have been agreed to:

a) payment of a fine by the Respondent in the amount of $5,000.00, pursuant to Section 24.1.1(b) of MFDA By-law No. 1;
b) payment of costs by the Respondent in the amount of $3,500.00, pursuant to Section 24.2 of MFDA By-law No. 1;
c) prohibition of the Respondent from conducting securities related business in any capacity while in the employ or associated with any MFDA Member for a period of two (2) years, commencing from the date of the Hearing Panel's Order, pursuant to Section 24.1.1.(e) of MFDA By-law No. 1; and
d) compliancy by the Respondent with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder, including MFDA Rule 2.1.1.

AGREED FACTS

5. From July 1996 to July 2002, the Respondent was registered in British Columbia as a mutual fund salesperson with various mutual fund dealers.

6. From July 2002 to December 2003, the Respondent was registered in British Columbia as a mutual fund salesperson with Hub Capital Inc., a Member of the MFDA.

7. From December 2003 to March 2014, the Respondent was registered in British Columbia as a mutual fund salesperson with Desjardins Financial Security Investments Inc., ("Desjardins") a Member of the MFDA.

8. From December 2003 to November 6, 2012, the Respondent was also registered as a branch manager with Desjardins, ceasing this position as a result of the events described herein.

9. On March 4, 2014, the Respondent was terminated for cause as a result of the events described herein.

10. At this time, the Respondent is not currently registered in the securities industry in any capacity.

BACKGROUND

11. At all material times, the Respondent conducted business from a branch office located in Surrey, British Columbia. The Respondent was the branch manager of the location.

12. The Respondent first met AP in 1989, when AP moved into the same neighbourhood as the Respondent.

13. At the time of the events giving rise to this proceeding, AP was registered in British Columbia as a mutual fund dealing representative with Networth Financial Corp., ("Networth") a Member of the MFDA.

14. On March 28, 2012, AP's registration with Networth was terminated.

15. In or around April 2012, AP joined the Respondent's branch as a non-associate life insurance agent working on a part-time basis. She worked from home and did not occupy an office in the Respondent's branch office.

16. On July 16, 2012, AP informed the Respondent that she intended to join Desjardins as a mutual fund dealing representative effective September 1, 2012.

17. AP and her family maintained investment accounts at Networth. In anticipation of AP becoming a mutual fund dealing representative at Desjardins, the Respondent and AP agreed that AP should transfer her own accounts and those of her family to Desjardins, where the

Respondent would be the Approved Person assigned to the accounts until AP joined Desjardins, at which time the accounts would be re-assigned to AP.

18. AP never became registered with Desjardins.

Opening Client Accounts Without Performing Necessary Due Diligence

19. Between July 16, 2012 and September 5, 2012, AP completed the Desjardins account opening documents for 16 individuals (AP and fifteen of her family members) in relation to 20 accounts. The individuals were all members of AP's family.

20. AP completed the account opening documents in whole or in part and provided them to the Respondent to review for completeness, to sign as the Approved Person responsible for the accounts, and to submit to Desjardins for processing. The account opening documents included New Account Application Forms ("NAAF's"), which contained a series of know-your-client ("KYC") questions requiring the individuals to indicate their investment objectives, risk tolerance and time horizon for investing, among other things. AP also provided the Respondent with other account opening related documents obtained from the individuals, including Dual Occupation Disclosure forms, Portfolio Questionnaires and Change of Dealer or Representative forms.

21. The Respondent never met with or spoke to any of the individuals to verify the accuracy or appropriateness of the information, including the know-your-client information, recorded on the account opening documents.

22. The Respondent submitted the account opening documents to Desjardins for processing using his representative code. Desjardins opened the accounts for the clients and the investments in each client's account were subsequently transferred in-kind from Networth to Desjardins. No changes were made to the investments in the clients' accounts at the time of transfer or subsequently.

23. Despite her original intention to do so, AP never became an Approved Person of Desjardins in September 2012 or at any time thereafter.

24. During the course of MFDA Staff's investigation, the Respondent stated that he did not know whether the KYC information and other information on the account opening documents for each client was accurate or appropriate when he signed the documents as the Approved Person responsible for servicing the accounts. The Respondent further stated that, because his relationship with AP quickly deteriorated in September 2012, he did not take any subsequent action to verify the accuracy or appropriateness of the clients' KYC information between July 16, 2012 and October 17, 2012, the date on which he reported his actions to Desjardins.

25. On October 17, 2012 during a quarterly branch meeting, the Respondent informed Desjardins' compliance officer, DB, of his actions. DB instructed the Respondent to meet with each affected client in person and complete new account opening documents. The Respondent met with each client between October 24, 2014 and October 26, 2014 and completed new account opening documents for their respective accounts.

26. At all material times, Desjardins' Policies and Procedures Manual ("PPM"), dated April 2012, provided in part that:

a) Section 1.1: an Approved Person has a professional and regulatory requirement to make a diligent effort to get to know and understand a client's personal and financial situation, as well as his investment goals;
b) Section 2: each Branch Manager and mutual fund representative must adhere to and be aware of MFDA Rule 2, regarding business conduct;
c) Section 2.2: an account opening form must be fully completed and signed by the client, the representative and the Branch Manager at the field office; and
d) Section 2.3: it is the representative's responsibility to gather the information necessary to ensure that clients are well served by investments that suit their individual needs and objectives.

27. Desjardins also produced a manual for its branch managers, entitled "Responsibilities of Branch Manager - Funds" (the "BM Manual"). Section 4.3 of the BM Manual stated in part that it is the responsibility of a branch manager to review all account openings, redemptions, and transfer out activities. Additionally, Section 7 of the BM Manual stated that it is the responsibility of a branch manager to ensure that non-registered personnel do not assist clients in completing KYC forms, risk tolerance assessments, applications for new accounts, or any other sales documents.

Blank Signed and Altered Forms

28. Following the receipt of a client complaint dated December 4, 2013, Desjardins commenced a review of 30 of the Respondent's client files.

29. Desjardins completed its review on January 28, 2014. The review identified among other things:

a) seven blank signed account forms contained in the client files;
b) eight instances where the Respondent had faxed a blank signature page to a client, with a request that the client return the completed signature page; and
c) two account forms for one client which the Respondent had re-used by crossing out the date, writing in a new date and initialing the date change.

30. The Respondent used the forms described in sub-paragraphs 28(b) and (c) to process switches in the clients' accounts and update KYC information for clients.

31. When Desjardins questioned the Respondent about the pre-signed forms that were found in the client files, the Respondent acknowledged he had used pre-signed forms in relation to two clients that he had had difficulty meeting with, but stated that it was not his normal practice to obtain, maintain or use blank signed forms.

32. By engaging in the conduct described above, between September 2011 and December 2013, the Respondent engaged in conduct unbecoming an Approved Person by:

a) obtaining, maintaining and using approximately seven blank signed forms in the accounts of four clients;
b) securing client signatures on account documentation for eight client accounts by sending only the signature pages to the respective clients; and
c) changing the dates on two client account forms that were faxed by one client.

MITIGATING FACTORS

33. The Respondent has worked in the financial services industry for 18 years and has no prior disciplinary history with the MFDA.

34. There is no evidence of misappropriation, unauthorized trading, or client harm in this matter.

35. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which the Respondent would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner.

36. The Respondent has cooperated fully with MFDA Staff during the course of the investigation, and by agreeing to this settlement, has avoided the necessity of a full hearing on the merits.

37. The Respondent has expressed remorse for his misconduct.

38. As a result of the events described in this Settlement Agreement, the Respondent was forced to sell his Desjardins franchise and had his branch manager status permanently revoked.

He was also placed on strict supervision for a period of one year and was issued a formal warning letter from the Member.

LAW

39. The role of a Hearing Panel during a settlement hearing is fundamentally different than its role during a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *Milewski (Re)*:

> "We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness." [Emphasis added.]
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> *Sterling Mutuals Inc. (Re)*, Hearing Panel of the Central Regional Council, File No. 200820, Decision and Reasons dated September 3, 2008 at para. 37.
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> *Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

40. The British Columbia Court of Appeal has acknowledged the importance and usefulness of settlements in achieving outcomes which further the goals of the securities regulatory context, noting that:

> 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 the means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.
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> *British Columbia Securities Commission v. Seifert,* [2007] B.C.J. No. 2186 (B.C.C.A) at para. 31.

41. In past cases, MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty 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.

Sterling Mutuals Inc. (Re), supra, at para. 36 and the decisions cited therein.

42. The primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is protection of the investor.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 (S.C.C.) at paras. 59, 68.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 74.

43. In addition to protection of the public, the goals of securities regulation also includes fostering public confidence in the capital markets and the securities industry.

Pezim v. British Columbia (Superintendent of Brokers), supra, at paras. 59, 68.

44. Hearing Panels frequently consider the following factors when determining whether a penalty is appropriate:

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.

Breckenridge (Re), supra, at para. 77 and the decisions cited therein.

Know-Your-Client

45. MFDA Rule 2.2.1(a), the Know-Your-Client Rule, requires that an Approved Person must use due diligence to learn the essential facts relative to each client and to each order or account accepted.

46. Due diligence includes the obligation to know and fully understand the client's financial situation, current and continuing financial obligations, net worth, income, liquid assets, understanding the market, and age relative to retirement.

Pretty (Re), MFDA File No. 201128, Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated January 30, 2014, at para. 92.

47. The Ontario Securities Commission has specifically recognized that the Know-Your-Client Rule is an "essential component of the consumer protection scheme of the [Securities] Act and a basic obligation of a registrant, and a course of conduct by a registrant involving a failure to comply with [it] is an extremely serious matter."

Daubney (Re), (2008) 31 OSCB 4817, at para. 15.

48. MFDA and Investment Industry Regulatory Organization of Canada ("IIROC") Hearing Panels have made clear that, given that the underlying client protection objective of the Know-Your-Client Rule, the due diligence obligation resides solely with an Approved Person. The obligation is non-transferrable and due diligence undertaken by a third party is insufficient to meet an Approved Person's obligations under Rule 2.2.1.

Arseneau (Re), MFDA File No. 201115, Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated September 28, 2012, at para. 45.

Milewski (Re), supra, at p. 10.

Supervision of Branch Activities

49. As is set out in MFDA Rule 2.5.5(f), "the branch manager must: (i) supervise the activities of the Member at a branch or sub-branch that are directed towards ensuring compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons; and (ii) supervise the opening of new accounts and trading activity at the branch office."

50. Likewise, MFDA Policy No. 2, states that "an on-site branch manager is in the best position to know the registered salespersons in the office, know or meet many of the clients, understand local conditions and needs, facilitate business through the timely approval of new accounts and respond immediately to questions or problems."

MFDA Policy No. 2 ("Minimum Standards for Account Supervision") issued September 12, 2013 at page 11.

The Standard of Conduct Rule and Pre-Signed Forms

51. MFDA Rule 2.1.1 sets the standard of conduct to be followed by all Approved Persons. The Rule is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule has been interpreted and applied in a purposive manner in a wide range of circumstances. As stated by the MFDA Hearing Panel in *Breckenridge (Re)*: "The Rule articulates the most fundamental obligations of all registrants in the securities industry."

> *Breckenridge (Re)*, supra, at para. 71.
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> *Price (Re)*, MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011, at paras. 118 – 121.

52. MFDA Rule 2.1.1 requires that each Member and Approved Person deal fairly, honestly, and in good with faith with clients; 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.

53. Hearing Panels of the MFDA and IIROC as well as provincial securities commissions have confirmed that the possession and use of pre-signed forms is prohibited.

> Price (Re), supra at para. 135 and the decisions cited therein.

54. The MFDA Hearing Panel in *Price (Re)* identified the dangers posed by pre-signed forms which can be summarized as follows:

a) pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;
b) 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; and

c) pre-signed forms subvert the ability of a Member to properly supervise trading activity.

Price (Re), supra, at paras. 122 – 124.

55. On the basis of the foregoing, by obtaining, altering and using pre-signed forms as described in Part IV of the Settlement Agreement and noted herein, the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1, and accordingly engaged in misconduct that should be regarded as serious.

MITIGATION

56. As noted earlier, there are certain mitigating factors in this case. By way of a few words of comment, we note that the Respondent has worked in the securities industry as a mutual fund salesperson for 18 years and has never previously been the subject of an MFDA disciplinary proceeding.

57. It is further to be noted that by entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing.

58. The Respondent has also expressed remorse for his conduct, and has cooperated fully with MFDA Staff's investigation of this matter.

59. The MFDA Staff's investigation did not reveal any evidence of unauthorized trades or client loss. There is no evidence to suggest that the Respondent received a financial or other benefit through his conduct, and there were no client complaints.

60. In all of the circumstances, the Hearing Panel is unanimously of the view that the Settlement Agreement should be accepted and that it is fair and reasonable having regarding to the criteria and analysis set out above.

DATED this 9th day of June, 2015.

"Thomas R. Braidwood"

The Hon Thomas R. Braidwood, Q.C.
Chair

"Liz Chichka"

Liz Chichka
Industry Representative

"Elaine Davison"

Elaine Davison
Industry Representative

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