



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Rupinder K. Bhathal**

Heard: October 6, 2016, in Vancouver, British Columbia  
Reasons for Decision: November 21, 2016

**REASONS FOR DECISION**

Hearing Panel of the Pacific Regional Council:

Robert G. Ward, Q.C.  
Cecilia Wong  
Bob Sokugawa

Chair  
Industry Representative  
Industry Representative

Appearances:

Christopher Corsetti

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Counsel for the Mutual Fund Dealers  
Association of Canada

Rupinder K. Bhathal

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Not in attendance nor represented by counsel

## **BACKGROUND**

1. By Notice of Hearing dated June 30, 2016 (the “Notice of Hearing”), a Hearing Panel of the Pacific Region of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to hear the merits of this matter. The Respondent Rupinder K. Bhathal (the “Respondent”) did not appear.

### **Ability to Proceed in Absence of Respondent**

2. No Reply to the Notice of Hearing has been filed in accordance with the requirements of Rules 8.1 and 8.2.

3. The Hearing Panel is satisfied that the Respondent was well aware of the date for hearing. She was served with the Notice Hearing in this matter<sup>1</sup>; the Respondent’s counsel emailed the MFDA to advise that neither she nor the Respondent would be attending any hearing on the matter.<sup>2</sup>

4. On August 25, 2016 a first appearance in this matter was held; the Respondent was served with the Notice of Hearing but again did not attend. The MFDA Corporate Secretary’s Office on September 7, 2016 emailed the Respondent’s counsel an announcement of the date of the hearing and the Order from the first appearance.<sup>3</sup>

5. At the direction of the Chair, the affidavit of Eleanor Lecocq, containing the evidence relied upon, was served upon the Respondent.

6. The Panel was satisfied that the Respondent was aware of the date of the hearing and, as advised by her counsel on July 25, 2016: “Neither myself nor Ms. Bhathal will be attending the hearing. My client understands the Panel may accept the facts and allegations as proven pursuant to MFDA Rule of Procedure 8.4. This should not be confused with (the allegation) that Ms.

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<sup>1</sup> Lecocq Affidavit sworn September 19, 2016, Exhibit T.

<sup>2</sup> Lecocq Affidavit, Exhibit U.

<sup>3</sup> Lecocq Affidavit, Exhibit V.

Bhathal does not dispute the allegations. Rather, she does not intend to engage in the contest of their proof.”

7. On the whole of the evidence it is clear to the Panel that the Respondent has received sufficient notice of the hearing and that it is appropriate to proceed with the hearing pursuant to Rule 7.3 and to accept as proven the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing and to impose penalties and costs pursuant to Rules 7.3(1) and 8.4(1).

### **The Evidence**

8. During the hearing Enforcement Counsel presented the affidavit of Eleanor Lecocq, MFDA Investigator, who was available for cross-examination.

9. Ms. Lecocq’s affidavit contained many exhibits outlining the history of the case and was most carefully put together. The Panel chose not to cross-examine Ms. Lecocq.

10. The Panel recognizes that some of the evidence presented is technically inadmissible pursuant to the rules of evidence, but we consider we are entitled pursuant to Rule 1.6(1) of the MFDA Rules of Procedure to admit as evidence any testimony, document or other thing including hearsay which we consider to be relevant to the matter before us.

11. We are satisfied both from the Rules and from authority<sup>4</sup> that we are entitled to proceed in the absence of the Respondent or her counsel and that we can rely upon the facts alleged by Enforcement Counsel as supported by the facts in Eleanor Lecocq’s affidavit.

### **The Allegations**

12. There are five (5) allegations against the Respondent as set out in the Notice of Hearing dated June 30, 2016:

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<sup>4</sup> See, for example, Re W.H. Stuart Mutuals Ltd., Marilyn Diane Stuart and Walter Howard Stuart (MFDA 201426), 2016.

**Allegation #1:** Between December 2012 and January 2014, the Respondent processed unauthorized redemptions in the accounts of client TP and client GG, and misappropriated the proceeds of those redemptions, contrary to MFDA Rules 2.1.1 and 2.3.1(a).

**Allegation #2:** Between November 10, 2009 and January 20, 2014, the Respondent falsified client GG's signature on an at least three account forms including one trade ticket that was used to process a transaction, and used two blank pre-signed account forms to process redemptions in client GG's account, contrary to MFDA Rule 2.1.1.

**Allegation #3:** Commencing June 3, 2015, the Respondent failed to comply with requests from Staff of the MFDA ("Staff") to attend an interview to give information relevant to the subject matter of Staff's investigation concerning her conduct as an Approved Person, contrary to section 22.1 of MFDA By-law No. 1.

**Allegation #4:** On February 11, 2014, the Respondent interfered with the Member's supervisory investigation into her conduct by providing false and misleading information in response to the Member's inquiries, contrary to MFDA Rules 2.5.1, 1.1.2, 2.1.4, and 2.1.1.

**Allegation #5:** Between about February 2013 and July 2013, the Respondent made unauthorized withdrawals from insurance client accounts to pay the clients' own insurance premiums and the insurance premiums of others, falsified insurance client signatures, and processed insurance applications without the knowledge or consent of the clients, and thereby failed to be of such character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1.

## **Facts**

## **Registration History**

13. From January 5, 2006 to February 12, 2014, the Respondent was registered in British Columbia as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life"), a Member of the MFDA.

14. On February 12, 2014, Sun Life terminated the Respondent as a result of the events described below.

15. From about June 2005 to April 2014, the Respondent was licensed by the Insurance Council of British Columbia ("ICBC") as a life and accident and sickness insurance agent.

16. At all material times, the Respondent conducted business in the Abbotsford, British Columbia area.

17. The Respondent is not currently registered in the securities industry in any capacity. See paragraphs 1-5 of Notice of Hearing and Lecocq Affidavit, Exhibit A.

#### **Allegation #1 - Unauthorized Redemptions and Misappropriation of Client Monies**

18. The Respondent misappropriated a total of \$26,793.66 from 2 clients.

#### **Client GG**

19. GG was a client of Sun Life whose accounts were serviced by the Respondent.

20. On or about October 24, 2012, the Respondent processed redemptions totaling approximately \$15,365 from client GG's RESP account at Sun Life without the knowledge or authorization of client GG, and misappropriated the proceeds of the redemptions.

Lecocq Affidavit, Exhibit O and Pages 35-36 of Exhibit H

21. The Respondent processed the redemptions in client GG's RESP account using pre-signed account forms she collected from the client.

Lecocq Affidavit, Exhibit O

22. In January 2014, the Respondent arranged for approximately \$2,800 to be deposited into client GG's RESP account in an attempt to conceal that she had previously misappropriated monies from the client. The Respondent processed this transaction by falsifying client GG's signature on a trade ticket.

Lecocq Affidavit, Exhibit I and N

23. The Respondent obtained the \$2,800 she deposited into client GG's RESP account by processing unauthorized redemptions from accounts held by insurance clients.

#### **Client TP**

24. At all material times, client TP was a mutual fund client of Sun Life whose accounts were serviced by the Respondent.

25. In December 2012, the Respondent processed three redemptions totaling \$9,520 from client TP's RESP account without the knowledge or authorization of client TP. The Respondent transferred the proceeds of the redemptions to an insurance account in the name of client TP and then misappropriated these monies.

Lecocq Affidavit, Exhibit J and K

#### **Allegation #2 - Signature Falsification and Blank Pre-Signed Account Forms**

##### **Falsified Client's Signatures**

26. During the July 17, 2015 interview with GG, she confirmed that the Respondent falsified her signature on the following account forms:

- a. a change of banking information form dated November 10, 2009;
- b. a transfer authorization form dated May 12, 2012; and
- c. an order ticket dated January 20, 2014.

Lecocq Affidavit L, M, and N and pages 24, 25, 34, 37-39 of Exhibit H

### **Blank Pre-Signed Account Forms**

27. During the July 17, 2015, interview with GG, she confirmed that she signed two blank pre-signed account forms dated October 24, 2012, for the Respondent.

Lecocq Affidavit, Exhibit O and pages 35-36 of Exhibit H

28. In addition, the Respondent used two blank pre-signed order tickets dated October 24, 2012 to process redemptions in client GG's account.

29. By virtue of the foregoing conduct, the Respondent falsified client GG's signature on at least three account forms and used two blank pre-signed account forms to process redemptions in client GG's account.

### **Allegation #3 —Failure to Cooperate with Staff Investigation**

30. Notwithstanding the Respondent's initial indications of cooperation, on June 3, 2015, counsel for the Respondent e-mailed MFDA Staff to advise that the Respondent had decided to decline any interview with an MFDA investigator.

31. On June 5, 2015, MFDA Staff wrote to counsel for the Respondent and advised if the Respondent should fail to attend an interview MFDA Staff may include an allegation of failure to cooperate with an MFDA investigation, contrary to section 22.1 of MFDA By-law No. 1.

32. The Respondent refused or failed to attend an interview with MFDA Staff.

Lecocq Affidavit, paras 14-23 and Exhibit P

**Allegation #4 —False Statements to Sun Life**

33. On February 11, 2014, Sun Life interviewed the Respondent as part of its investigation into the Respondent's misconduct.

Lecocq Affidavit, Exhibit F

34. On June 11, 2014, the Respondent sent an e-mail to MFDA Staff in response to MFDA Staff's queries.

Lecocq Affidavit, Exhibit Q

35. During the interview, the Respondent provided information to Sun Life which was false and misleading. In particular, the Respondent stated during the interview with Sun Life that client TP had instructed the Respondent to process the redemptions in client TP's RESP account and that the proceeds of the redemptions had been deposited into client TP's bank account.

36. The Respondent's statements to Sun Life were false and misleading as client TP had not authorized the redemptions, and the Respondent had transferred the proceeds of the redemptions to an insurance account in the name of client TP and misappropriated these monies from the client.

**Allegation #5 - The ICBC Determined that the Respondent Engaged in Commission Fraud**

37. On May 8, 2014, following the completion of an investigation into the Respondent's conduct, the Insurance Council of British Columbia ("ICBC") issued an intended decision, pursuant to section 231 of the Financial Institutions Act, RSBC 1996, c. 141, that the Respondent was unsuitable to hold an insurance license for a period of 5 years. ICBC found that the Respondent, without her clients' consent or knowledge, took out and changed insurance policies and in order to pay the premiums, she made unauthorized withdrawals from other clients' RESP

accounts held with Sun Life. The Respondent admitted to forging clients' signatures on the insurance applications. ICBC found that the Respondent was motivated by personal financial gain and caused harm to her clients.

Lecocq Affidavit, Exhibit R

## **The Law**

### **Allegation #1 - Unauthorized Redemptions and Misappropriation of Client Monies**

38. Misappropriation of client funds is clearly dishonest and inconsistent with MFDA Rule 2.1.1.

39. The Client also falsified account statements. Once again, this is clearly dishonest conduct and inconsistent with the conduct set out in MFDA Rule 2.1.1.

### **Allegation #2 – Signature Falsification and Blank Pre-Signed Account Forms.**

40. By obtaining, maintaining and using 2 forms signed by the client when the account forms were blank or only partially completed, the Respondent is in breach of Rule 2.1.1.

### **Allegation #3 – Failure to Cooperate with Staff Investigation**

41. The MFDA is authorized to request and oblige an Approved Person or any other person under its jurisdiction to attend and give information respecting an investigation of any person under its jurisdiction. The MFDA is so required by MFDA By-law No. 1, section 21, and the obligation of the Approved Person to attend and be examined can be found in section 22.1 of By-law No. 1.

42. There are numerous authorities for the proposition that an Approved Person must provide staff with an interview and attend an interview when requested to do so. This is required to allow the MFDA to fulfill its regulatory mandate to protect the public.<sup>5</sup>

43. The IDA Hearing Panel in Robb (*infra*) stated that:

The Court observed that persons involved in the business of trading in securities must expect to be required to comply with certain defined standards of conduct and to submit to and participate in investigations concerning activities which may or may not be in breach of these defined standards. In the context of the Association's By-laws, such participation includes the obligation to submit a report in writing with regard to any matter being investigated by the Association, the obligation to produce for inspection and to provide copies of the books, records and accounts relevant to such an investigation, and the obligation to meet and give information respecting such investigation. Indeed, as is evident from the above passages, the Court felt that market participants should expect to be questioned by regulators from time to time in order to ensure that they have complied with the prescribed standards.

*In the Matter of Douglas Bruce Robb (Re)*, [2002] I.D.A.C.D. No. 1 (Pacific District Council) at para. 16 ("Robb").

44. Given the complaints of GG of signature falsification, the requests that the Respondent attend an interview were reasonable and make it clear that a breach of MFDA By-law No. 1 was unjustified.

Robb, *supra*, at para. 16.

#### **Allegation #4 – False Statements to Sun Life**

45. During an interview with Sun Life, the Respondent stated that the client TP had instructed the Respondent to process the redemptions in the client's RESP account and that the proceeds of the redemptions had been deposited into the client's bank account. These statements

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<sup>5</sup> See, for example, *Phillips* (2015) MFDA file no. 201368.

were clearly false as TP had not authorized the redemptions. The Respondent transferred the proceeds to an insurance account in the name of the client and personally misappropriated those monies from the client.

#### **Allegation #5 – ICBC Determined that the Respondent Engaged in Commission Fraud**

46. The Respondent took out and changed insurance policies without the client’s consent, and in order to pay the premiums she made unauthorized withdrawals from other clients’ RESP accounts with Sun Life. She did so for personal financial gain, and causing harm to her clients.

47. It was the determination of Sun Life that the commission fraud by the Respondent amounted to \$280,823.43.

#### **Findings of the Panel**

#### **Allegation #1 – Unauthorized Redemptions and Misappropriation of Client Monies**

48. Clearly this is a breach of MFDA Rule 2.1.1 which requires the Respondent to maintain a standard of conduct which is fair, honest and ethical. Misappropriating client funds and falsifying client account statements are a breach of MFDA Rule 2.1.1.

#### **Allegation #2 – Signature Falsification and Blank Pre-Signed Account Forms**

49. The Respondent admitted that she obtained, maintained and used two forms “approximately” which were signed by the client when the forms were blank or only partially completed. This is a clear breach of MFDA Rule 2.1.1.

50. In the Panel’s view the Respondent has failed to follow MFDA Rules, has engaged in conduct detrimental to the public interest and has failed to observe a high standard of conduct.

#### **Allegation #3 – Failure to Cooperate with Staff Investigations**

51. The breach by the Respondent of her obligation to attend and be interviewed is also a breach of the standard of conduct required by Rule 2.1.1 of the MFDA. MFDA Rule 2.1.1 is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule articulates the most fundamental obligations of all registrants in the mutual fund industry.

*Breckenridge (Re)*, [2007] Hearing Panel of the Ontario Regional Council, MFDA  
File No. 200718, Panel Decision dated November 14, 2007, at P. 20.

52. There is a further issue as to whether the MFDA has retained jurisdiction over the Respondent. By section 24.1.4 of MFDA By-law No. 1, an Approved Person remains subject to the jurisdiction of the MFDA whether or not they have ceased to be an Approved Person. The Ontario Court of Appeal has recently stated that there is no statutory impediment preventing self-regulatory organizations like the MFDA from continuing to exercise jurisdiction over its Members: *Investment Dealers Association of Canada v. Taub* [2009] 98 O.R. (3d) 169 paras. 42 to 46.

#### **Allegation #4 – False Statements to Sun Life**

53. By providing false statements to Sun Life, the Respondent obstructed the Member's supervisory investigation of her conduct contrary to Rules 2.5.1, 1.1.2, 2.1.4 and 2.1.1.

54. It is the conclusion of the Panel that by refusing to attend an interview, by misappropriating funds, by falsifying a client's signature, by making false statements to the Member, and by the commission fraud at ICBC, the Respondent has violated the standard of conduct required by Rule 2.1.1.

#### **Allegation # 5 – ICBC Determined that the Respondent Engaged in Commission Fraud**

55. The commission fraud in issue is clearly in contravention of the standard of conduct required by Rule 2.1.1.

## Penalty

56. By section 24.1.1(c) and (e) of MFDA By-law No. 1 the Hearing Panel has the authority to order a permanent prohibition against the Respondent conducting securities related business in any capacity while in the employ of or associated with any MFDA Member commencing from the date of the order. Pursuant to the authority so granted, we impose:

- a. A permanent prohibition on the Respondent conducting securities related business in any capacity while in the employ of or associated with any MFDA Member commencing October 6, 2016.
- b. As to **Allegation #1**, the Respondent misappropriated \$26,793.66 from two mutual fund clients. The Rules suggest that the fine amount should be at minimum equal to the amount misappropriated and we hereby impose a fine of \$55,000 in respect of the misappropriation.
- c. As to **Allegations #2 and #4** – Falsified Signatures and Blank Pre-signed Forms and misleading a Member. For each of these breaches the Rules suggest a minimum penalty of \$5,000. We hereby impose a penalty of \$15,000 in respect to those three breaches.
- d. As to **Allegation #3** – Failure to Cooperate with Staff Investigations. We consider this a very serious matter. It inhibits the ability of the MFDA to protect the public, being a primary goal of securities regulation.<sup>6</sup> The cases of *Re Stuart*, *Re McBurnie* and *Re Phillips* all decided in 2015, being, respectively MFDA file No's 201524, 201522 and 201368 each ordered a \$75,000 fine. For Allegation #3 the Panel imposes a fine of \$75,000.
- e. **Allegation #5** – Standard of conduct required by Rule 2.1.1. The Respondent was found to have engaged in commission fraud as above detailed. The Hearing Panel hereby imposes a fine in the amount of \$10,000 for allegation #5.
- f. Globally, the penalty then is \$155,000.
- g. *In the matter of Robert Roy Parkinson* (2005) MFDA file no. 200501 found the following to be pertinent:

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<sup>6</sup> *Pezim v. British Columbia* (1994) 2 S.C.R. 557 paragraphs 59 and 68.

- i. The seriousness of the allegations;
  - ii. The Respondent's past conduct including past sanctions;
  - iii. The Respondent's experience and level of activity in the capital markets;
  - iv. Whether the Respondent recognizes the seriousness of the improper activity;
  - v. The harm suffered by investors as a result of the Respondent's activity;
  - vi. The benefits received by the Respondent as a result of improper activity;
  - vii. The risk to investors were the Respondent to continue to operate in capital markets in the jurisdiction;
  - viii. Damage to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
  - ix. Specific and general deterrence;
  - x. The need to alert others to the consequences of inappropriate activities; and
  - xi. Previous decisions.
- h. Approved Persons carry on business based upon the trust of clients. In reliance on such persons to act in in compliance with MFDA Rules and regulations the penalties must reflect the gravity of the breaches and the importance of the maintenance of the trust of clients and the public generally in Approved Persons.<sup>7</sup>
- i. Both GG and TP were financially hurt by the Respondent's conduct. The respondent failed or refused to cooperate and has shown no recognition of the seriousness of the breaches. The Panel has considered numerous similar cases<sup>8</sup>.

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<sup>7</sup> *Hill and Crawford Investment Management Group Ltd. and Albert Rodney Hill* (2009) MFDA file no. 200834.

<sup>8</sup> *Re Lindsay* (2011) MFDA file no. 201040; *Re Andersen* (2005) MFDA file no. 200508; *Re Woloshen* (2011) MFDA file no. 201029; *Re Vilfort* (2010) MFDA file no. 201021; *Re Visanji* (2014) MFDA file no. 201405; *Re Parkinson* (2005) file no. 200501; *Re Zhang* (2013) MFDA file no. 201309; *Re Foley* (2016) MFDA file no. 201547.

- j. Bearing in mind the cases previously cited as well as the foregoing, the Panel is convinced that a prohibition and the amount of the fines are justified.

### **Deterrence**

57. Deterrence is clearly relevant in determining the penalty for this kind of conduct. See *Cartaway Resources Corp*, 2004 1 S.C.R. 672 paragraphs 52 to 62 and *In the matter of Arnold Tonnies* (2005) MFDA file no. 200503.

### **The Protection of the Investing Public**

58. The purpose of the MFDA is to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct are required of both Members and Approved Persons. The Panel considers that the penalties imposed are appropriate to achieve that purpose.

### **Costs**

59. There were multiple allegations against the Respondent requiring careful investigation of the pertinent facts. The Hearing Panel is convinced that costs in the amount of \$10,000, as sought by staff, are appropriate.

**DATED** this 21<sup>st</sup> day of November, 2016.

“Robert G. Ward”

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Robert G. Ward, Q.C.  
Chair

“Cecilia Wong”

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Cecilia Wong  
Industry Representative

“Bob Sokugawa”

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Bob Sokugawa  
Industry Representative

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