



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: Jake Florentino Cadigal

Heard: July 9, 2019 in Winnipeg, Manitoba

Decision: July 9, 2019

Reasons for Decision: August 29, 2019

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Adam Dudley
Greg Wiebe

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Jeff Baigrie)	Counsel for the Respondent
)	
)	
Jake Florentino Cadigal)	Respondent, in person
)	
)	

I. BACKGROUND

1. Proceedings were commenced against Jake Florentino Cadigal (“Respondent”) by Notice of Settlement Hearing dated February 8, 2019. The Settlement Hearing was held pursuant to section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (“MFDA”) on July 9, 2019 in respect of a proposed settlement agreement dated February 5, 2019 (“Settlement Agreement”) entered into between the Respondent and Staff of the MFDA (“Staff”).
2. The Respondent attended the hearing in person and was represented by counsel who made submissions on the Respondent's behalf.
3. At the conclusion of the hearing the Hearing Panel (the “Panel”) accepted the Settlement Agreement. These are our Reasons for Decision.

II. RESPONDENT'S ADMISSION OF VIOLATIONS

4. The Respondent admitted to the following violations of the By-laws, Rules or Policies of the MFDA:
 - a) Between March 2015 and October 2016, without the knowledge, authorization or approval of client LT, the Respondent signed the signature of client LT on 9 account forms, thereby falsely representing that client LT was aware of and had approved the content of the forms and that she had authorized a redemption from the account when that was not the case, contrary to the policies and procedures of the Member and MFDA Rule 2.1.1;
 - b) Between March 2015 and January 17, 2017, the Respondent was named in the will of his client LT as Executor of her estate which gave rise to a potential conflict of interest between the Respondent and client LT, which the Respondent failed to disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1.

III. TERMS OF SETTLEMENT

5. Staff and the Respondent agreed on the following terms of settlement:

- a) The Respondent shall pay a fine in the amount of \$15,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1;
- b) The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of By-law No. 1;
- c) The Respondent shall in the future exercise due diligence to comply with MFDA Rules 2.1.4, 2.1.1 and the policies and procedures of any Member he is associated with; and
- d) The Respondent will attend the Settlement Hearing in person.

IV. AGREED FACTS

6. The facts which were agreed to between Staff and the Respondent for the purposes of reaching the Settlement Agreement are set out in Section IV of the Settlement Agreement. Quoting directly from paragraphs 6 through 28 of the Settlement Agreement, the facts are as follows:

Registration History

6. Since August 5, 2008, the Respondent has been registered in Manitoba, Saskatchewan, Alberta and Ontario as a mutual fund salesperson / dealing representative¹ and has been an Approved Person with Doheny Securities Limited (“**DSL**” or the “**Member**”), a Member of the MFDA.

7. Between December 1991 and August 2008, the Respondent was registered as a mutual fund salesperson in Manitoba, Alberta and Ontario and was an Approved Person with another mutual fund dealer that became a Member of the MFDA on January 11, 2002.

8. At all material times, the Respondent carried on business in the Winnipeg, Manitoba area.

Clients LT and JT

9. Shortly after the Respondent became an Approved Person at DSL in August 2008, client LT and her husband client JT transferred their investment accounts and became clients of DSL. The Respondent was the Approved Person responsible for servicing their accounts. The Respondent had been a close family friend of clients LT and JT for more than 20 years.

Unauthorized Redemption and Signature Falsification

10. On September 26, 2008, clients LT and JT opened a registered education savings plan (“**RESP**”) account at DSL to fund the post-secondary school education of their children AT and LT2. Clients LT and JT were joint account holders of the RESP. Only one signature was required and either account holder acting alone could authorize transactions in the account.

11. On January 7, 2015, clients LT and JT separated.

12. Following their marital breakdown, client JT, the father of the children, was granted custody of the children.

13. In October 2016, AT, the oldest daughter of clients LT and JT was attending university. A tuition payment was due at around that time. AT and client JT contacted the Respondent to find out if the tuition payment could be funded from the RESP account.

14. The Respondent confirmed that the tuition payment could be funded by means of a redemption from the RESP account. He obtained client JT’s signature on a redemption form authorizing the trade. As the RESP account was a joint account and he assumed that client LT would not object to the proposed redemption from the RESP account to fund the required tuition payment, the Respondent prepared the redemption form with both of the joint account holders identified on the signature line of the redemption form.

15. The Respondent made no attempt to speak with client LT or to otherwise contact her about the proposed redemption transaction. Without the knowledge, authorization or approval of client LT, the Respondent falsified client LT’s signature next to her name on the signature line of the redemption transaction form and submitted the form to be processed.

16. On October 17, 2016, without the knowledge, authorization or approval of client LT, a redemption in the amount of \$7,743 was processed from the RESP account using the form containing the falsified signature of client LT and the proceeds were applied to pay AT’s tuition.

17. It later came to light that between March 25, 2015 and October 17, 2016, the Respondent had falsified client LT’s signature on a total of 9 account forms, as reflected in the chart below:

Date on Form	Type of Form
Mar. 25/15	PAC/SWP Change Form
Aug. 4/15	Client Information Change Form
Sep. 8/16	Dynamic Funds – RESP EAP Form
Sep. 8/16	Fee Disclosure Form
Sep. 8/16	Dynamic Funds – RESP EAP Form
Sep. 8/16	Fee Disclosure Form

Jan. 25/17	Dynamic Funds – RESP EAP Form
Jan. 25/17	Fee Disclosure Form
Oct. 17/16	Redemption Form

18. By falsifying client LT’s signature on the 9 forms, the Respondent created the false representation on that documentation that client LT was aware of, authorized and approved the content of those forms and signed each of those forms when this was not in fact the case.

Failure to Disclose Conflict Of Interest

19. At all material times, DSL’s policies and procedures required its Approved Persons to immediately disclose to DSL any conflict of interest that arises, or can reasonably be expected to arise, with respect to any client.

20. On March 17, 2015, client LT updated her will, and named the Respondent as Executor of her estate.

21. On or around March 29, 2015, client LT provided the Respondent with a copy of her updated will and told him that she had named him as Executor of her estate.

22. The Respondent knew or ought to have known that when client LT named him in her will as the Executor of her estate, the circumstances gave rise to a potential conflict of interest that he was required to disclose to DSL and to ensure that it was addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

23. The Respondent did not inform DSL that he had been named in client LT’s will as the Executor of her estate. On August 10, 2015 the Respondent completed a compliance questionnaire as part of an audit of his branch by compliance staff of DSL. One of the questions on the compliance questionnaire asked the Respondent: “are you or a relative an executor/executrix for any of your clients?” The Respondent responded to that question with the answer “no” when he knew that his answer was false.

24. On January 17, 2017, client LT amended her will and the Respondent is no longer named as Executor of her estate.

Client LT’s Complaint

25. On February 14, 2017, client LT submitted a complaint letter to DSL in which she alleged among other things that unauthorized transactions had been processed in her RESP account and that the Respondent had agreed to be named as the Executor of her estate which she alleged gave rise to a conflict of interest.

26. On April 21, 2017, DSL conducted an investigation into the allegations that client LT had made in her complaint letter. DSL identified the 9 RESP account forms listed above that contained falsified signatures of client LT during its investigation.

27. After completing its investigation, DSL disciplined the Respondent by imposing a \$2,500 fine on August 4, 2017, and placed the Respondent under close supervision since February 13, 2017.

28. On June 14, 2017, as part of its investigation, DSL sent audit letters to all of the clients whose accounts were serviced by the Respondent in order to determine whether any unauthorized transactions had been processed in their accounts. No additional clients reported unauthorized transactions to DSL.

¹ On September 28, 2009, as a result of the implementation of National Instrument 31-103, the mutual fund salesperson registration category was changed to “dealing representative – mutual fund dealer”.

V. ANALYSIS

Role of the Panel

7. A Hearing Panel has two options when considering a Settlement Agreement – it must either accept or reject the Settlement Agreement.

MFDA By-law No. 1, s.24.4.3

8. The role a Hearing Panel performs at a Settlement Hearing is fundamentally different from the role it performs at a Contested Hearing.

9. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

“...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.’” (in *re Milewski*, [1999] I.D.A.C.D. No. 17.)

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

10. Hearing Panels have acknowledged that settlements which have been worked out by the parties should be respected, as Panels do not know what led to the settlement, or what was given up by the parties during the course of the negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement as was the case here is also a factor to consider.

Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017, at paras.22 and 23

11. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was also articulated by the British Columbia Court of Appeal in a case before the British Columbia Securities Commission which is frequently cited by the Panels which preside over MFDA Settlement Hearings:

"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. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing."

British Columbia (Securities Commission) v Seifert, 2007 BCCA 484, para.31

Factors Concerning Acceptance of a Settlement Agreement

12. The primary goal of all securities regulation is investor protection.

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

13. In addition to investor protection, the goal of securities regulation include fostering public confidence in the capital markets and in the securities industry as a whole.

Pezim, supra, at paras. 59 & 68

14. MFDA Hearing Panels have consistently taken into account the following criteria when considering whether to accept a proposed settlement:

1. That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
2. That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
3. That the agreement addresses the issues of both specific and general deterrence;
4. That the agreement is likely to prevent the type of conduct set out in the facts;
5. That the agreement will foster confidence in the integrity of the Canadian capital markets;
6. That the agreement will foster confidence in the integrity of the MFDA; and
7. That the agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), *supra*, at pages 8 and 9

15. In determining the appropriateness of a proposed penalty, Hearing Panels also frequently cite the decision in *Breckenridge (Re)*, where the Panel stated that sanctions "... should be preventative, protective and prospective in nature ..." taking into account the following considerations:

- a) the protection of the investing public;
- b) the integrity of the securities markets;
- c) specific and general deterrence;
- d) the protection of the MFDA's membership; and
- e) protection of the integrity of the MFDA's enforcement processes.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007, at paras. 75 &76

16. The Panel in *Breckenridge (Re)* set out the following additional factors which a Panel should consider, having regard to the specific circumstances of the case:

- a) The seriousness of the allegations proved against the respondent;
- b) The respondent's experience in the capital markets;
- c) The level of the respondent's activity in the capital markets;
- d) The harm suffered by investors as a result of the respondent's activities;
- e) The benefits received by the respondent as a result of the improper activity;
- f) The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- g) The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- h) 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;
- i) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- j) Previous decisions made in similar circumstances.

Breckenridge (Re), *supra*, at para.77

Enhanced Penalties

17. The Panel also notes that the MFDA has been warning Approved Persons and Members about the prohibition against using pre-signed account forms, altered accounts forms and the falsification of a client's signature, for a number of years. Most recently, in MFDA Bulletin

#0661-E, dated October 2, 2015, Staff reiterated this prohibition and advised that it would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

Application in the Present Case

18. In deciding to accept the Settlement Agreement the Panel took into account the factors set out above, as follows:

Nature of the Misconduct: Falsified Account Forms

19. MFDA Rule 2.1.1 sets the standard of conduct which is 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 p.20

20. MFDA Rule 2.1.1 requires that each Member and Approved Person shall observe high standards of ethics and conduct in the transaction of business and refrain from engaging in business conduct or practice which is unbecoming or detrimental to the public interest.

Breckenridge (Re), supra, at p.20

21. The Panel agrees with Staff's submission that by falsifying client signatures on account forms, the Respondent engaged in conduct which was prohibited by MFDA Rule 2.1.1 and, therefore, engaged in serious misconduct.

22. The Respondent falsified the client's signature on 9 account forms, thereby falsely representing that client LT was aware of and had approved the content of the forms and had authorized redemption from the account when that was not the case.

23. Hearing Panels have held that altering or falsifying forms is a contravention of the standard of conduct set out in MFDA Rule 2.1.1.

Byce (Re), MFDA File No. 201311, Hearing Panel of the Central Region Council, Decision and Reasons dated September 4, 2013

24. The falsification of a client's signature or initials is particularly serious. In the MFDA matter of *Barnai (Re)*, the Hearing Panel, citing earlier decisions, summarized the principles with respect to falsifying client signatures:

6. Falsifying client signatures or initials is serious misconduct. Signature falsification (like the use of pre-signed 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.

7. As a Hearing Panel of the Investment Dealers Association (now IIROC) stated in *Bell (Re)*:

“Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole.”

Bell (Re), [2005] LD.A.C.D. No. 15, Alberta District Council, Panel Decision dated March 21, 2005, at para. 35.

8. *Lamontagne (Re)* reiterated the principle set out in *Bell (Re)*, but went on to state that, where warranted, hearing panels may distinguish between serious and less egregious instances of falsification:

“Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. . .forgery often attracts severe sanctions. While there is no such thing as a "minor case" of forgery, hearing panels may distinguish between more and less egregious examples of forgery.”

Lamontagne (Re), [2009] IIROC No. 6, Alberta District Council, Panel Decision dated January 27, 2009, at paras. 14 and 45. *Wise (Re)*, 2012 LNCMFDA 79.

Barnai (Re), MFDA File No. 201325 Hearing Panel of the Central Regional Council, Decision and Reasons dated March 17, 2015, paras.6-8

25. At the hearing of this matter, in response to the Panel's inquiry, Staff confirmed their submission that the Respondent's conduct in question falls at the less egregious end of the spectrum of misconduct regarding examples of forgery as the misconduct in question was not undertaken with the intention of either benefitting the Respondent or harming the client; nor was any such benefit received or harm caused, in fact.

Post-Bulletin Misconduct

26. Seven of the nine falsifications in this case were committed after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015. MFDA Hearing Panels have considered this to be an aggravating factor.

Techer (Re), MFDA File No. 201662, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016, at para.44

Owen (Re), MFDA File No. 201325, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated November 23, 2017, at para.35

Nature of the Misconduct: Failure to Disclose Conflict of Interest

27. The Respondent admitted that although he was aware that the fact that he was named as an executor in his client's Will gave rise to a potential conflict of interest between himself and the client, he failed to disclose this fact to the Member and failed to exercise responsible business judgment influenced only by the best interests of the client.

28. The relevant Rules applicable to a situation where an Approved Person accepts appointment as an executor of a client's estate are set out in MFDA Rules 2.1.4 and 2.1.1.

29. MFDA Rule 2.1.4 requires, among other things, that: (1) each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client; and (2) where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

30. In its submission, Staff pointed out that closely related to MFDA Rule 2.1.4 are the prohibitions against accepting appointment as power of attorney or executor which are set out in MFDA Rule 2.3.1.

31. Hearing Panels have identified that the purpose of the prohibition in MFDA Rule 2.3.1 preventing an Approved Person from acting on a power of attorney or accepting an appointment to act as executor for a client is also to help eliminate conflicts of interest.

Brauns (Re), MFDA File No. 201203, Hearing Panel of the Central Regional Council Panel Decision dated October 15, 2013, at para.73

The Respondent's Experience in the Securities Industry

32. The Respondent has been registered as a mutual fund dealing representative since December 1991. He is an experienced dealing representative who ought to have known and complied with the requirements of the MFDA's By-laws, Policies and Rules.

The Respondent's Past Conduct

33. The Panel notes, however, that the Respondent has not previously been the subject of MFDA disciplinary proceedings and that the matters which form the subject of the Settlement Hearing constitute the only misconduct in what was otherwise an unblemished career.

The Respondent's Recognition of the Seriousness of his Misconduct

34. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct. Further, at the hearing, when provided an opportunity to make a submission, the Respondent demonstrated to the Panel that he clearly recognized the seriousness of his misconduct and took full responsibility for his actions.

35. By entering into the Settlement Agreement, the Respondent has also allowed the MFDA to avoid the necessity of incurring the additional time and expense associated with a fully contested hearing.

Client Harm and Any Benefits Received by the Respondent

36. There was no evidence of client harm resulting from the Respondent's conduct.

37. Nor was there evidence that the Respondent received any financial benefit from engaging in the misconduct described in the Settlement Agreement.

Deterrence

38. The Panel agrees with Staff's submission that a fine of \$15,000 is both necessary and sufficient to achieve the goals of both specific and general deterrence.

39. The Panel also takes into consideration the fact that the Respondent paid a penalty to the Member of \$2,500 and was placed under close supervision from February 2017 to the date of the Settlement Hearing.

40. The Panel is of the view, therefore, that the combination of the MFDA penalty and the penalty imposed by the Member constitutes a significant deterrent to the Respondent and others in the mutual fund industry.

Previous Decisions in Similar Cases

41. In its written submission, Staff identified the following penalties have been imposed in similar circumstances:

CASE	FACTS	OUTCOME
<i>Singh</i> , MFDA File No. 2017110, Hearing Panel of the Central Regional Council, Decision dated Dec 8, 2017.	<ul style="list-style-type: none"> Respondent falsified 7 client signatures Respondent obtained, possessed and used 1 pre-signed form 	<ul style="list-style-type: none"> Fine of \$12,000 Costs of \$2,500
<i>Yip</i> , MFDA File No. 2017106, Hearing Panel of the Central Regional Council, Decision dated July 20, 2018	<ul style="list-style-type: none"> Respondent falsified 13 client signatures Respondent obtained, possessed and used 4 pre-signed forms 	<ul style="list-style-type: none"> Fine of \$12,500 Costs of \$2,500
<i>Williams</i> , MFDA File No. 201778, Hearing Panel of the Pacific Regional Council, Decision dated May 23, 2018	<ul style="list-style-type: none"> Respondent participated in an investment club with 2 clients, and co-mingled his monies with client monies in an account for the investment club, which gave rise to conflict of interest 	<ul style="list-style-type: none"> Fine of \$5,000 Costs of \$2,500
<i>Sakkejha</i> , MFDA File No. 201140, Hearing Panel of the Central Regional Council, Decision dated Feb 9, 2012	<ul style="list-style-type: none"> Respondent accepted appointments as co-power of attorney, co-trustee for a family trust and executor for clients Respondent obtained, possessed and used 85 pre-signed forms 	<ul style="list-style-type: none"> Fine of \$7,500 Costs of \$2,500

42. The Panel agrees that the proposed penalty is consistent with the penalties imposed in similar cases as set out above.

VI. CONCLUSION

43. Having reviewed the written submissions of Staff and having heard oral submissions from Staff, counsel for the Respondent and from the Respondent himself, the Panel is satisfied that it is in the public interest to accept the Settlement Agreement.

44. Sanctions are intended to be preventative, protective and prospective in nature. An appropriate penalty is one which will protect the public interest and prevent the occurrence of future conduct which would be detrimental to the integrity of the Markets.

Breckenridge (Re), supra, at paras 75-77

45. We are of the view that in the circumstances of this case, the proposed penalty accomplishes these goals.

46. The Panel appreciated the Respondent's attendance and participation in the hearing and agrees with his counsel's submission that the Respondent has "learned his lesson".

47. Given the nature of the misconduct, the need for specific and general deterrence, the mitigating factors in this case and the decisions to which the Panel was referred from similar MFDA hearings, the Panel agrees that the proposed penalty as set out in the Settlement Agreement is reasonable and proportionate.

48. Accordingly, the Panel accepts the Settlement Agreement.

DATED this 29th day of August, 2019.

“Sherri Walsh”

Sherri Walsh
Chair

“Adam Dudley”

Adam Dudley
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

DM 694103