



**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: Bryan Brooks Church

Heard: September 30, 2021 by electronic hearing in Winnipeg, Manitoba
Decision September 30, 2021
Reasons for Decision: June 29, 2023

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Richard Yaffe, K.C.
Birju Shah
Greg Wiebe

Chair
Industry Representative
Industry Representative

Appearances:

Audrey Smith)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Bryan Brooks Church)	Respondent
)	
)	

I. BACKGROUND AND CONTRAVENTIONS

1. By Notice of Settlement Hearing dated July 30, 2021, a hearing panel (the “Panel”) of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened via WebEx on September 30, 2021 to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Panel should accept a settlement agreement (the “Settlement Agreement”) entered into between staff of the MFDA and Bryan Brooks Church (the “Respondent”) on July 30, 2021 with respect to matters for which the Respondent could be disciplined as an Approved Person pursuant to section 24.1.1 of By-law No. 1 of the MFDA.
2. The Settlement Agreement relates to allegations that the Respondent:
 - a) between September 23, 2014 and February 28, 2021, obtained, possessed, and in some instances, used to process transactions, 25 pre-signed account forms in respect of 17 clients, contrary to MFDA Rule 2.1.1; and
 - b) between April 10, 2014 and February 28, 2021, altered and used to process transactions, 60 account forms in respect of 48 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

II. FACTS

3. The Respondent has been registered in the Province of Manitoba since January 2010 in the securities industry.
4. The Respondent has been registered in Manitoba as a dealing representative with Investia Financial Services Inc. (“Investia”), a Member of the MFDA, since September 11, 2014.
5. At all material times, the Respondent conducted business in the Souris, Manitoba area.

6. At all material times, the policies and procedures maintained by Investia did not permit Approved Persons to obtain, possess or use pre-signed account forms, or to alter account forms after the clients had signed them.
7. Between September 23, 2014 and February 28, 2021, the Respondent obtained, possessed, and in some instances use to process transactions, 25 pre-signed account forms in respect of 17 clients.
8. The pre-signed account forms included 2 RESP Educational Assistance Payment forms, 6 Investment Account Application forms, 3 Know Your Client (“KYC”) Update forms, 6 Systematic Instruction forms, 6 Transfer forms, and 2 New Client Application forms.
9. Between April 10, 2014 and February 28, 2021, the Respondent altered and used to process transaction, 60 account forms in respect of 48 clients, by altering information on the account forms without having the client initial the alterations.
10. The altered account forms included 14 New Client Application forms, 1 RSP Application form, 13 Transfer forms, 8 KYC Update forms, 6 Order Instruction forms, 1 Fee Disclosure form, 10 Systematic Instruction forms, and 7 Account Application forms.
11. The alterations to the account forms include changes to client risk tolerance, withdrawal amounts, investment objectives, income, net worth, plan type, fund code, and time horizon.
12. During the course of a branch review, Investia discovered several of the account forms described above. In May 2019, Investia completed a full review of the client files serviced by the Respondent and discovered additional account forms described above.
13. On September 6, 2019, letters were sent by Investia to all clients whose accounts were serviced by the Respondent, which included a 3-year transaction history for each client. In respect of pre-signed or altered forms discovered by Investia that contained KYC information, Investia provided a copy of the client’s KYC information on record and asked clients to review the KYC information to ensure that it was recorded accurately. In respect of other types of pre-signed or altered account forms, Investia asked the clients to review

their account history for accuracy and to contact Investia if any inconsistencies existed. No client raised any concern in response to its letter.

14. On August 8, 2019, the Respondent signed a Letter of Undertaking, agreeing to abide by Investia's policies and procedures going forward. On December 23, 2019, Investia completed its strict supervision of the Respondent and issued a warning letter to him in respect of the pre-signed and altered account forms described above.

15. On April 2, 2021, Investia completed another audit of the client files serviced by the Respondent and discovered the 8 remaining account forms described above. Following the audit, Investia sent letters to all clients whose accounts were serviced by the Respondent, which included a 3-year transaction history for each client. In respect of pre-signed or altered forms discovered by Investia that contained KYC information, Investia provided a copy of the client's KYC information on record and asked the clients to review the KYC information to ensure that it was recorded accurately. In respect of other types of pre-signed or altered account forms, Investia asked the clients to review their account history for accuracy and to contact Investia if any inconsistencies existed. No client raised any concern in response to its letter.

16. On June 2, 2021, Investia placed the Respondent on strict supervision for a minimum of 90 days. The Respondent paid an additional \$542 to Investia consisting of an administrative fee and a fee in respect of the letters sent to clients.

III. DISCUSSION

17. There is no evidence that the Respondent received any financial benefit from the conduct set out above, beyond the commissions or fees he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

18. There is no evidence of client loss, client complaints, or lack of authorization.

19. The Respondent has not previously been the subject of a MFDA disciplinary proceeding.

20. The Respondent has cooperated with MFDA staff throughout the course of its investigation and these proceedings, and has admitted the allegations.

21. By admitting the facts and contraventions described above, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the merits.

22. The aggravating factors in this case are the nature and extent of the misconduct. The obtaining, and subsequent completion and use, of pre-signed account forms, the alteration of account forms without approval and initialing by clients, and the use of photocopied signature pages, are all contraventions which go to the very core of self-regulation in this industry. The gravity of the contraventions is exacerbated by the number of forms obtained by the Respondent and the number of clients involved. The strict adherence to the rules and procedures regarding the use of account forms is central to the creation of a self-regulatory system that allows a Member to supervise client accounts.

23. A further aggravating factor is that some of the subject forms were processed after the MFDA issued MFDA Bulletin 0661-E on October 2, 2015 (the "Bulletin"). In the Bulletin, MFDA staff advised Members and Approved Persons that MFDA staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin.

24. A further aggravating factor is the Respondent's experience. The Respondent was registered in the securities industry since 2010 and was registered as a mutual fund dealing representative with Investia since 2014, and ought to have known and respected the MFDA's and Investia's compliance requirements.

25. The mitigating factors in this case are that the Respondent has no disciplinary record, there were no client complaints, and there is no evidence of harm or loss to clients.

26. MFDA hearing panels in past cases have taken into account the following considerations when determining whether a proposed settlement should be accepted:¹

¹ *Sterling Mutuals Inc. (Re)*, Hearing Panel of the Central Regional Council, File No. 200820, Decision and Reasons dated August 21, 2008

- 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 satisfactorily addresses the issues of both specific and general deterrence with respect to the Respondent and the industry, respectively;
- 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.

27. The protection of investors is considered by the MFDA to be the primary goal of securities regulation. The goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.²

28. The penalties that are imposed must be sufficient to affirm public confidence in the regulation of the mutual fund industry, and to ensure deterrence.

29. There are a number of general principles that apply when imposing a penalty, which were presented and which the Panel considered.

30. MFDA counsel also reviewed with the Panel various MFDA cases and the penalties imposed in those cases.

² *Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557

31. The Panel may accept or reject the recommended Settlement Agreement (Section 24.4.3 of MFDA By-law No. 1). Further, it is accepted practice that hearing panels should not interfere lightly in a negotiated settlement.

IV. DISPOSITION

32. At the conclusion of the Hearing, the Panel approved a Settlement Agreement entered into by the parties which, *inter alia*, provides as follows:

- a) the Respondent shall pay a fine in the amount of \$17,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1.; and
- d) if at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

33. We are satisfied that the penalty agreed upon is reasonable and that the public's interest is served by the Settlement Agreement, and we agree unanimously that the Settlement Agreement should be accepted.

DATED this 29th day of June, 2023.

“Richard Yaffe”

Richard Yaffe, K.C.
Chair

“Birju Shah”

Birju Shah
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

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