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Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

**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: Dennis Jerome Duclos**

Heard: December 5, 2022 by electronic hearing in Toronto, Ontario

Decision: December 5, 2022

Reasons for Decision: February 7, 2023

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, K.C.  
Cheryl Hamilton  
Colleen Waring

Chair  
Industry Representative  
Industry Representative

Appearances:

Michael A. M. Mantle	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
Hunter Parsons	)	Counsel for the Respondent
	)	
	)	
Dennis Jerome Duclos	)	Respondent
	)	
	)	

## I. INTRODUCTION

1. By Notice of Hearing, dated the 23<sup>rd</sup> day of March, 2022, the Mutual Fund Dealers Association of Canada (“MFDA”) made the following Allegations against Dennis Jerome Duclos (“Respondent”):

Allegation #1: On or about June 5, 2019, the Respondent processed a redemption in a client account based on the instructions from someone other than the client, contrary to the Member’s policies and procedures and MFDA Rules 1.1.2, 2.5.1 and 2.1.1.

Allegation #2: Between in or about November 2019 and June 2020, the Respondent failed to report to the Member complaints received from a client, contrary to the Member’s policies and procedures and MFDA Rules 1.1.2, 2.5.1, 2.1.1, 1.4(b) and MFDA Policy 6.

Allegation #3: Between in or about September 2014 and October 2018, the Respondent altered and used to process transactions 4 account forms in respect of 2 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

Allegation #4: Between in or about October 2019 and September 2020, the Respondent failed to record and maintain evidence of client trade instructions with respect to 16 redemptions in 4 client accounts, contrary to the Member’s policies and procedures and MFDA Rules 1.1.2, 2.5.1 and 5.1(b).

2. The Notice of Hearing was served on the Respondent on April 14, 2022, as shown by the Affidavit of Terri Ash, sworn April 20, 2022, and the exhibits attached thereto.

3. The First Appearance in this proceeding took place before a Chair of a Hearing Panel of the Central Regional Council on June 9, 2022.

4. At the First Appearance, Counsel for Staff of the MFDA, as well as Counsel for the Respondent, made submissions with respect to scheduling and other procedural matters.

5. After hearing the submissions, an Order was made with respect to scheduling and, on consent, the matter was put over to October 12, 2022, for a Second Appearance.

6. At the Second Appearance, the parties jointly requested that the matter go over to December 1, 2022, for a further Interim Appearance.

7. On November 18, 2022, the parties entered into a Settlement Agreement.

8. On November 25, 2022, the MFDA issued a News Release advising that a Settlement Agreement had been entered into between the Staff of the MFDA and the Respondent and that a

Settlement Hearing would take place electronically by videoconference before a Hearing Panel on December 5, 2022, commencing at 10:00 a.m. (Eastern).

9. The News Release set out the Allegations in full and advised that the proposed Settlement Agreement concerns matters for which the Respondent may be disciplined pursuant to sections 20 and 24.1.1 of MFDA By-law No. 1.

10. Upon a review, it was clear that the Settlement Agreement had been prepared in accordance with Section 24.4 of MFDA By-law No. 1.

11. After taking into account the provisions of Rule 2.1(1)(a) of the MFDA *Rules of Procedure*, it was clear to the Hearing Panel that the parties had complied with Rule 15.2 of the MFDA *Rules of Procedure* and the matter was permitted to proceed.

12. At the commencement of the Settlement Hearing, the Hearing Panel granted the joint request of the parties to move the proceedings “in camera” so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the MFDA *Rules of Procedure*.

13. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions, both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

14. After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on December 5, 2022. At that time, we advised that written Reasons would follow. These are those Reasons.

## **II. SETTLEMENT AGREEMENT**

15. The salient portions of the Settlement Agreement are as follows:

### **“II. CONTRAVENTIONS**

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) on or about June 5, 2019, the Respondent processed a redemption in a client account based on instructions from someone other than the client who did not have trading authorization on the

- account, contrary to the Member's policies and procedures and MFDA Rules 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1);
- b) between approximately November 2019 and June 2020, the Respondent failed to report to the Member complaints received from a client, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 1.4(b), 1.1.2 (as it relates to MFDA Rule 2.5.1), and MFDA Policy 6;
  - c) between approximately September 2014 and October 2018, the Respondent altered and used to process transactions 4 account forms in respect of 2 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
  - d) between approximately October 2019 and September 2020, the Respondent failed to record and maintain evidence of client trade instructions with respect to 16 redemptions in 4 client accounts, contrary to the Member's policies and procedures and MFDA Rules 5.1(b) and 1.1.2 (as it relates to MFDA Rule 2.5.1).

### **III. TERMS OF SETTLEMENT**

5. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$25,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1 in accordance with the following schedule:
  - i. \$10,000 upon acceptance of the Settlement Agreement by a Hearing Panel;
  - ii. \$2,500 on or before the last business day of the first month following the date of acceptance of the Settlement Agreement;
  - iii. \$2,500 on or before the last business day of the second month following the date of acceptance of the Settlement Agreement;
  - iv. \$2,500 on or before the last business day of the third month following the date of acceptance of the Settlement Agreement;
  - v. \$2,500 on or before the last business day of the fourth month following the date of acceptance of the Settlement Agreement;
  - vi. \$2,500 on or before the last business day of the fifth month following the date of acceptance of the Settlement Agreement; and
  - vii. \$2,500 on or before the last business day of the sixth month following the date of acceptance of the Settlement Agreement.
- b) 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;
- c) the Respondent shall in the future comply with MFDA Rules 2.1.1, 5.1(b), 1.4(b), 1.1.2 (as it relates to MFDA Rule 2.5.1), and MFDA Policy 6; and
- d) the Respondent shall attend in person or via videoconference on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule "A".

#### **IV. AGREED FACTS**

##### **Registration History**

7. Since approximately September 12, 2011, the Respondent has been registered in Ontario as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. (the "Member"), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Waterloo, Ontario area.

##### **Unauthorized Redemption**

9. At all material times, clients #1 and #2 (spouses) were clients of the Member, whose accounts were serviced by the Respondent.

10. Clients #1 and #2 held individual Tax Free Savings Accounts (the "TFSA's") at the Member. Neither client had trading authorization over the investment accounts of their spouse.

11. On or about May 31, 2019, client #2 emailed the Respondent to inquire about the balances of the TFSA's. Client #2 also advised the Respondent that clients #1 and #2 wished to access monies held in their accounts in order to pay expenses that they had incurred.

12. On or about May 31, 2019, the Respondent replied to client #2 and disclosed the balances held in the TFSA's of both client #1 and client #2.

13. The Respondent did not contact or obtain the consent of client #1 before disclosing to client #2 the TFSA balance of client #1.

14. On or about June 4, 2019, client #2 emailed the Respondent requesting that \$10,000 be withdrawn from each of the TFSA's belonging to client #1 and client #2, for a total of \$20,000.

15. On or about June 5, 2019, without communicating with client #1, the Respondent completed and submitted to the Member for processing a trade ticket to redeem \$10,000 from the TFSA of client #1. Based on the instructions of client #2, the Respondent also submitted for processing a trade ticket to redeem \$10,000 from the TFSA of client #2.

16. Client #2 also instructed the Respondent to electronically transfer the proceeds of the redemption to a joint account belonging to clients #1 and #2.

17. On or about November 21, 2019, client #1 complained to the Respondent that he had not authorized the \$10,000 redemption from his TFSA. Client #1 also complained that he did not receive any of the proceeds of the redemption.

### **Failure to Report Client Complaints to the Member**

18. At all material times, the Member's policies and procedures required Approved Persons to immediately report any verbal or written client complaint to their manager no later than 2 business days after being informed about the complaint.
19. As described above at paragraph 17, on or about November 21, 2019, client #1 complained to the Respondent that he had not authorized the \$10,000 redemption from his TFSA that was processed on or about June 5, 2019. The Respondent failed to report to the Member that he had received the November 21, 2019 complaint from client #1.
20. On May 20, 2020, client #1 complained for a second time to the Respondent about the unauthorized redemption from his TFSA.
21. The Respondent did not report the May 20, 2020 complaint to the Member.
22. On June 18, 2020, client #1 complained to the Member directly about the unauthorized redemption that was processed from his TFSA on or about June 5, 2019.
23. The Member commenced an investigation into the Respondent's conduct after receiving the June 18, 2020 complaint from client #1, and subsequently compensated client #1 for the full amount of the monies (\$10,000) that the Respondent had redeemed from the TFSA of client #1 without authorization.
24. In compliance with a direction from the Member, the Respondent paid \$5,000 to the Member to partially reimburse the Member for compensation that it had paid to client #1 to address the June 18, 2020 complaint.

### **Altered Account Forms**

25. At all material times, the Member's policies and procedures prohibited Approved Persons from altering or correcting any information on a signed document, without having the client initial the document to show that the client was aware of the change and authorized it.
26. Between approximately September 2014 and October 2018, the Respondent altered and used to process transactions 4 account forms in respect of 2 clients by altering information on the account forms without having the client initial the alterations.
27. The forms consisted of:
  - a) 2 Sun Life Financial Know Your Client (KYC) Update Forms;
  - b) 1 Sun Life Financial Nominee Tax-Free Savings Account (TFSA) Application Form; and
  - c) 1 Sun Life Client Information Form (Know your client (KYC)).
28. The information that the Respondent altered on the account forms included a fund code, fund name, risk tolerance, net worth, and investment objective sections.

29. As part of the Member's investigation, the Member met with the clients for whom the Respondent altered the information on account forms and confirmed that the alterations were authorized even though the clients had not been asked to initial the changes.

30. With respect to the Respondent altering account forms as described above, there is no evidence:

- a) of client loss, complaints, or lack of authorization; or
- b) that the Respondent received any financial benefit from altering signed documents as described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

### **Failure to Record and Maintain Evidence of Client Instructions**

31. At all material times the Member's policies and procedures required Approved Persons to maintain detailed evidence of all client conversations in their client files. The Member's policies and procedures required that Approved Persons maintain electronic meeting notes on the Member's back-office system.

32. Between approximately October 2019 and September 2020, the Respondent failed to record and maintain notes of client trade instructions with respect to 16 redemptions in 4 client accounts.

33. On or about January 27, 2021, the Member contacted the 4 clients to determine whether the redemptions that were processed in their accounts by the Respondent were authorized. No clients advised the Member that redemptions processed in their accounts were unauthorized.

34. With respect to the Respondent's failure to maintain records of client instructions as described above, there is no evidence of client loss, complaints, or lack of authorization.

### **Additional Factors**

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

36. On February 22, 2021, the Member issued a warning letter to the Respondent regarding the processing of the unauthorized TFSA redemption and the failure to record and maintain records of client trade instructions described above. The Member placed the Respondent under close supervision for a period of six months.

37. No additional concerns with respect to the conduct of the Respondent arose during the period when he was subject to close supervision.

38. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a contested hearing of the allegations."

## **III. THE LAW**

16. MFDA Rule 2.1.1 states, in part, as follows:

“2.1.1 **Standard of Conduct.** Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (b) observe high standards of ethics and conduct in the transaction of business;
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; . . .”

17. MFDA Rule 2.5.1 states as follows:

“2.5.1 Member Responsibilities

Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.”

18. MFDA Rule 1.1.2 states as follows:

“1.1.2 Compliance by Approved Persons

Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1(c)(i) or (ii) shall comply with the By-laws and Rules as they relate to the Member or such Approved Person.”

### **Allegation #1: Unauthorized Redemption**

19. In the Settlement Agreement, the Respondent admitted that he processed a redemption in a client account at the request of someone other than the client.

20. Hearing Panels have found that when an Approved Person processes transactions without client authorization, he or she violates MFDA Rule 2.1.1.

*Jean (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 2016114, Panel Decision dated June 15, 2017.

*Griffith (Re)*, [2014] Hearing Panel of the Central Regional Council, MFDA File No. 201329, Panel Decision dated August 19, 2014.

*Stolarz (Re)*, [2016] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201642, Panel Decision dated November 2, 2016.

21. MFDA Hearing Panels have also been clear that Approved Persons cannot accept instructions from a client’s spouse or other close family members.

*Mahendran (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201911, Panel Decision dated June 20, 2019.

*Stutz (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018129, Panel Decision dated April 8, 2019.

22. In *Milewski (Re)* it was noted that:

“...it is not sufficient to take another person's word, even a husband's. Due diligence requires that the information relating to a new client's investment experience and objectives must be obtained directly from the client. The registered representative's obligations are owed to her and it is to her to whom he must look for instructions.”

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17, Ontario District Council Decision dated July 28, 1999, at p. 10.

23. In contemplating the *Milewski (Re)* case, the Hearing Panel in *DeVuono (Re)* further noted that:

“In the securities regulatory context, an advisor is not permitted to accept instructions with respect to a client account from a third party on the basis of a third party's “ostensible authority” to provide Know-Your-Client information or trade instructions. An advisor is only permitted to accept instructions from a third party, if the third party has trading authority or a power of attorney to act on behalf of the client.”

*DeVuono (Re)*, [2012] Hearing Panel of the Pacific Regional Council, MFDA File No. 201102, Panel Decision (Misconduct) dated November 22, 2012, at para. 67.

24. By failing to obtain client authorization before processing a transaction, the Respondent failed to deal fairly, honestly and in good faith with the affected client, observe the high standard of ethics and conduct expected of an Approved Person, and acted in a manner that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1. The Respondent was not permitted to accept trading instructions from the client's spouse. By doing so, the Respondent enabled the client's spouse to take the client's investment savings without his actual authorization.

## **Allegation #2: Failure to Report Client Complaints to the Member**

25. MFDA Rule 1.4(b) states as follows:

“1.4 REPORTING REQUIREMENTS

(b) **Approved Person Reporting.** Every Approved Person must report to the Member such information, in a manner and within such period of time, as may be prescribed by the Corporation from time to time relating to complaints, criminal, civil and other legal proceedings, regulatory proceedings, arbitrations, contraventions and potential contraventions of legal and regulatory requirements, disciplinary action by regulatory bodies, settlements with and compensation paid to clients, registration or licensing by any regulatory body, bankruptcies, insolvencies, garnishments and related events.”

26. Section 4.1(b) of MFDA Policy No. 6 states, in part, as follows:

“An Approved Person shall report the following events to his or her current Member in such detail as required by the Member, within 2 business days:

b) the Approved Person is aware of a complaint from any person, whether in writing or any other form, and with respect to him or herself, or any other Approved Person, involving allegations of:

...

iii) engaging in securities related business outside of the Member;

...“

MFDA Policy No. 6, section 4.1.

27. In the Settlement Agreement, the Respondent admitted that he failed to report to the Member complaints received from a client as a result of the processing of a redemption in a client account at the request of someone other than the client.

28. Prior MFDA Hearing Panels have held that the failure of an Approved Person to report client complaints or the potential contravention of regulatory requirements to the Member constitutes a contravention of MFDA Rule 1.4(b).

*Gabrysz (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA Hearing No. 201816, Panel Decision dated December 18, 2019.

*Dunlop (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA Hearing No. 201759, Panel Decision dated January 18, 2019.

29. Hearing Panels have held that a failure by an Approved Person to meet his or her reporting obligations under Policy No. 6 is serious misconduct. In *Qi and Huang (Re)* the Hearing Panel stated that:

“The requirement that Approved Persons inform their Member of client complaints ensures that the Member is able to fulfill its duty to engage in an adequate and reasonable assessment of all complaints. When an Approved Person fails to inform their Member, or when an Approved Person enters into private settlement agreement without advising or obtaining the prior written consent of the Member, the Member’s ability to assess the complaint as well as its ability to determine if there are further issues with the Approved Person is subverted.”

*Qi and Huang (Re)*, [2013] Hearing Panel of the Central Regional Council, MFDA Hearing No. 201253, Panel Decision (Penalty) dated November 20, 2013 at para. 14.

### **Allegation #3: Altered Forms**

30. In the Settlement Agreement, the Respondent admitted that he altered and used to process transactions 4 account forms in respect to 2 clients by altering information on the account forms, without having the client initial the alterations.

31. When an Approved Person alters information on an account form without having the client initial the form to show that the client is aware of the change and has authorized it, the Approved Person engages in conduct that is contrary to MFDA Rule 2.1.1.

*Perron*, [2021] Hearing Panel of the Atlantic Regional Council, MFDA File No. 202041, Panel Decision dated May 20, 2021 at para. 15.

*Wong (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201848, Panel Decision dated July 23, 2018 at para. 5.

*Lok (Re)*, [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202011, Panel Decision dated May 11, 2020 at para. 9.

*Warr (Re)*, [2020] Hearing Panel of the Atlantic Regional Council, MFDA File No. 202037, Panel Decision dated September 25, 2020 at para. 13.

32. The MFDA has repeatedly warned Approved Persons that serious consequences may result in cases where Approved Persons alter account forms without having the client initial the form to show that they are aware of the change made to the information on the account form.

MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017).

MFDA Bulletin #0661-E dated October 2, 2015.

33. The use of altered forms adversely affects the integrity and reliability of account documents, and can lead 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.

#### **Allegation #4: Failure to Record and Maintain Evidence of Client Instructions**

34. In the Settlement Agreement, the Respondent admitted that he had failed to record and maintain evidence of trade instructions with respect to 16 redemptions in 4 client accounts.

35. The relevant version of MFDA Rule 5.1(b) at the time of the misconduct affirmed that:

“Every Member shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others and shall keep such other books, records and documents as may be otherwise required by the Corporation. Such books and records shall contain as a minimum the following:

...

(b) an adequate record of each order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such record shall show:

- i) the terms and conditions of the order or instructions and of any modification or cancellation thereof;
- ii) the account for which entered or received;
- iii) the time of entry or receipt, the price at which executed and, to the extent feasible, the time of execution or cancellation; and
- iv) evidence that the client was informed of all fees and charges in accordance with Rule 2.4.4.”

MFDA Rule 5.1(b).

36. Prior MFDA Hearing Panels have held that processing trades on behalf of clients while failing to maintain or make a written record of the client instructions constitutes a contravention of MFDA Rule 5.1(b).

*Stutz (Re), (supra)*

*Sawwaf (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201888, Panel Decision dated January 17, 2019.

37. Moreover, previous MFDA Hearing Panels have held that failing to maintain a record of client instructions is a contravention of MFDA Rules 1.1.2 and 2.5.1.

*Drysdale (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018105, Panel Decision dated November 21, 2019 at para. 17

*O'Connor (Re)*, [2018] Hearing Panel of the Prairie Regional Council, MFDA File No. 201756, Panel Decision dated October 31, 2018 at para. 150.

38. In *Maxwell (Re)*, the Hearing Panel noted that:

“...failing to record a client’s trading instructions, frustrates the Member’s ability to respond to inquiries and complaints concerning the propriety of trading activities in their account.”

*Maxwell (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201764, Panel Decision dated April 16, 2018 at para. 15.

39. In our view, by his admitted actions, the Respondent contravened MFDA Rules 5.1(b), 1.1.2 and 2.5.1.

#### **IV. PRINCIPLES AND FACTORS REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS**

40. Investor protection is the primary goal of securities regulation. Settlements play an important and necessary role in meeting this objective.

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

41. The role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. 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.

42. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

- i. Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- ii. Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- iii. Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- iv. Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- v. Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- vi. Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
- vii. Whether the Settlement Agreement will foster confidence in the regulatory process itself.

*Jacobson (Re)*, [2007], Hearing Panel of the Prairie Regional Council, MFDA  
File No. 200712, Reasons for Decision, dated July 13, 2007, at para. 70.

43. Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. These include:

- a) The seriousness of the allegations proved against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience in the capital markets;

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

*Headley [Re]*, 2006, Hearing Panel of the Central Regional Council, MFDA File No. 200509, Reasons for Decision dated February 21, 2006 at para.85.

44. When determining whether a penalty agreed upon by the parties is appropriate, the Hearing Panel may also consider the MFDA's Sanction Guidelines ("Guidelines") which came in to effect on November 15, 2018. The Guidelines are not mandatory or binding on the Hearing Panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA Hearing Panels, are also reflected and described in the Guidelines.

## **V. CONSIDERATIONS IN THE PRESENT CASE**

45. Staff made very detailed written and oral submissions as to how these principles and factors applied to the case before us. These included the following:

(a) Nature of the Misconduct

46. Staff submitted that the totality of the Respondent's admitted misconduct is serious and that meaningful penalties need to be imposed on Approved Persons who engage in such misconduct in order to deter similar misconduct from occurring again in the future. We agree with this submission.

47. The Respondent's conduct ended up facilitating the theft of the client's investment holdings by his spouse. As a result, the client suffered a loss of \$10,000.

(b) The Respondent's Past Conduct Including Prior Sanctions

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

(c) The Respondent's Recognition of the Seriousness of his Misconduct

49. By entering into the Settlement Agreement, the Respondent has recognized the seriousness of the misconduct and accepted responsibility for his actions, and has saved the MFDA the time, resources and expenses associated with a contested disciplinary hearing.

(d) Client Harm

50. Ultimately, the client was fully compensated by the Member for his \$10,000 loss. The Member recovered \$5,000 from the Respondent to partially indemnify the Member for the compensation that it paid to the client.

(e) Deterrence

51. Deterrence is intended to capture both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets in order to protect investors.

52. In our view, the proposed penalty will specifically deter the Respondent from engaging in similar activity by imposing a meaningful sanction upon him which reflects the seriousness of the misconduct at issue.

53. The proposed penalty will also deter others in the mutual fund industry from engaging in similar activity to that described in the Settlement Agreement.

(f) Previous Decisions Made in Similar Circumstances

54. Staff provided the Hearing Panel with a detailed chart seeking to show that the proposed resolution is within the reasonable range of appropriateness with regards to other decisions made by MFDA Hearing Panels in similar circumstances.

55. The following cases were discussed:

- a) *Mahendran (Re)*, [2019], Hearing Panel of the Central Regional Council, MFDA File No. 201911, Panel Decision dated June 20, 2019
- b) *Stutz (Re)*, [2019], Hearing Panel for the Central Regional Council, MFDA File No. 201829, Panel Decision dated April 18, 2019.
- c) *Brock (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201838, Panel Decision dated May 23, 2018.
- d) *Stolarz (Re)*, [2016], Hearing Panel of the Atlantic Regional Council, MFDA File No. 201642, Panel Decision dated November 2, 2016.
- e) *Borrero (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201897, Panel Decision dated February 7, 2019.
- f) *Griffith (Re)*, [2014] Hearing Panel of the Central Regional Council, MFDA File No. 291329, Panel Decision dated August 19, 2014.
- g) *Russell (Re)*, [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202209, Panel Decision dated April 27, 2022.
- h) *Jutting (Re)*, [2020] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201970, Panel Decision dated March 16, 2020.
- i) *Chovancak (Re)*, [2019] Hearing Panel of the Prairie Regional Council, MFDA File No. 201890, Panel Decision dated January 22, 2019.
- j) *Jean (Re)*, [2017], Hearing Panel of the Central Regional Council, MFDA File No. 2016114, Panel Decision dated June 15, 2017.

## **VI. DECISION**

56. After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

## **VII. ORDER**

57. After accepting the Settlement Agreement, we made the following Order:

- a) The Respondent shall pay a fine in the amount of \$25,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of By-law No. 1 in accordance with the following schedule:

- i. \$10,000 on December 5, 2022;
  - ii. \$2,500 on or before January 31, 2023;
  - iii. \$2,500 on or before February 28, 2023;
  - iv. \$2,500 on or before March 31, 2023;
  - v. \$2,500 on or before April 28, 2023;
  - vi. \$2,500 on or before May 31, 2023; and
  - vii. \$2,500 on or before June 30, 2023.
- 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 MFDA By-law No. 1;
- c) The Respondent shall in the future comply with MFDA Rules 2.1.1, 5.1(b), 1.4(b), 1.1.2 (as it relates to MFDA Rule 2.5.1), and MFDA Policy 6; 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*.

**DATED** this 7<sup>th</sup> day of February, 2023.

“Thomas J. Lockwood”  
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Thomas J. Lockwood, K.C.  
Chair

“Cheryl Hamilton”  
\_\_\_\_\_  
Cheryl Hamilton  
Industry Representative

“Colleen Waring”  
\_\_\_\_\_  
Colleen Waring  
Industry Representative