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: Paul Anthony Dwyer

Heard: March 3, 2022 and March 23, 2022 by electronic hearing in Calgary, Alberta
Decision (Penalty): March 23, 2022
Reasons for Decision (Penalty): July 6, 2022

REASONS FOR DECISION (PENALTY)

Hearing Panel of the Prairie Regional Council:

Sherri Walsh	Chair
Birju Shah	Industry Representative
Annette Stephens	Industry Representative

Appearances:

Justin Dunphy	)	Senior Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Roderick Onoferychuk	)	Counsel for Respondent
Paul Anthony Dwyer	)	Respondent

I. INTRODUCTION

1. In our Decision (Misconduct) and Reasons dated January 20, 2022 (our "Decision"), this Panel made the following finding of misconduct:

> **Contravention #1:** In March 2018, the Respondent submitted for processing to the Member two trades for which he stood to earn commissions, after being informed by his Branch Manager that the trades would not be approved, thereby engaging in conduct that fell below the standard of conduct required of Approved Persons, and that gave rise to a conflict or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the interest of the client, contrary to MFDA Rules 2.1.1 and 2.1.4.

2. On March 3, 2022, the Panel reconvened to hear submissions from the parties with respect to the appropriate penalty to be imposed.

3. After hearing the parties' submissions that day, the Panel determined that we needed further information before being able to make our decision.

4. We asked for information with respect to the Respondent's registration status and the close supervision the Member with whom he was registered was conducting, and for the parties' submissions on the Panel's ability to impose a condition of strict supervision as part of the sanctions we might impose.

5. We also noted that although the Respondent's counsel had made submissions about the Respondent's inability to pay a fine, he had not provided evidence of same. We therefore allowed him the opportunity to do so.

6. The Penalty Hearing was adjourned to March 23, 2022 to allow the parties to bring forward the requested information and make further submissions.

II. EVIDENCE

7. When the Penalty Hearing resumed, the following documents were entered into evidence:

a) excerpt of the Respondent's registration status on the National Registration Database (the "NRD") which set out, among other things, the Respondent's current close supervision restrictions; and

b) the affidavit of Paul Dwyer sworn March 14, 2022.

8. The excerpt from the Respondent's registration status on the NRD showed that effective September 1, 2020, the Respondent has been subjected to close supervision while in the employ

of the Member, Global Maxfin Investments Inc./ Les Investissements Global (the "Member"), in both Alberta and Ontario.

9. In his affidavit, the Respondent provided information about his current financial circumstances and the education credits he has taken for the period January 2020 to March 2022.

10. He also provided information about his employment status from the time that he was terminated by his previous employer as the result of the conduct which is the subject of these proceedings, and information about the supervision to which he has been subjected since being employed by the current Member.

11. On this latter point, with respect to supervision, the Respondent said that he is under close supervision for an indeterminate amount of time.

12. The Respondent also attached to his affidavit as exhibits: a letter from the Member's Interim Chief Compliance Officer (the "Compliance Officer") and a letter from the Member's Chief Executive Officer (the "CEO").

13. The letter from the Compliance Officer dated March 11, 2022 confirmed that the Respondent was approved by the Alberta and Ontario Securities Commissions prior to his appointment with the Member in September 2020, with the condition of "close supervision". The letter stated that the Member has agreed to continue with the terms of supervision until the MFDA matter is settled and closed.

14. The letter also indicated that from the time the Respondent was first associated with the Member, the Compliance Officer has observed the Respondent to comply with all protocols at acceptable levels and that as his experience grows, his administrative compliance and KYC suitability continue to improve.

15. The Compliance Officer said that throughout the Respondent's 9-month application process to become registered with the Member, they found the Respondent's "professional processes, attention to detail and diligence to be uncommon." They also found that he actively accommodated supervision and review as an integral part of his processes.

16. The letter also described, under the heading "Noteworthy", that in January and February of 2021, the Respondent had a client pass away with in cash transfers inbound and unsettled. The letter noted that the Respondent did not proceed with instructions to buy investments on arrival of

the funds and he explicitly verified the status of his client with the hospital before documents were available. After probate, he advised trustees and executors to keep the funds in cash in the best interests of the estate and later family trust.

17. In the letter writer's view, the Respondent demonstrates a full understanding of regulations, rules, policies and procedures with holistic understanding of the reasoning and spirit of the rules, and the role the industry plays in the client advisor relationship.

18. With respect to the Respondent's book of business, the letter attached charts which the writer submitted showed very low gross earnings for the Respondent since 2020. The writer said that they were hopeful that the Respondent's results in 2022 would become sustainable. In their view, the Respondent's low earnings were because of his full and forthright disclosure to clients regarding the MFDA matter which is the subject of these proceedings, together with the risk of suspension and fines. The Compliance Officer was of the view that the Respondent's clients have been "reluctant to fully invest with the uncertainty".

19. The letter noted that the Respondent has not had a regular income, nor income at "usual volumes" since his termination in 2018 despite his efforts to pivot to general and life insurance services before returning to working as an investment advisor.

20. The letter from the CEO dated March 14, 2022 confirmed that the Respondent accepted close supervision conditions when he began working with the Member. Those conditions were originally specified for one year, however, because the MFDA matter had not been resolved, the Member has agreed to maintain conditions until it was resolved.

21. The letter confirmed that with respect to the Respondent's income, commission records reveal disappointing earnings from 2020 to now, noting that the Respondent was out of the industry for over two years due to the ongoing regulatory matter, before being reappointed as an Approved Person. The CEO said the Respondent has been enduring "an industry 'blacklisting' type of suspension since his termination in 2018".

22. He echoed the comments of the Compliance Officer that undoubtedly the Respondent's full and forthright disclosure to clients about his MFDA proceedings creates doubt and reluctance on the part of clients. He also expressed the view that any further short suspensions will have a substantial impact on the Respondent's ability to continue to work in the industry, as well as to obtain errors and omissions insurance.

23. The Respondent attached a number of documents to his affidavit to demonstrate his financial circumstances including his Canada Revenue Agency assessments for 2020 and 2018. Those documents showed that while in 2018 his income was $116,161.00, in 2020 his income was $4,087.00.

24. In his affidavit the Respondent stated that as a result of this incident, he and his wife have separated, although they live under the same roof. He has been able to contribute to household expenses by cashing out some of his RRSP, however, his wife has had to pay the majority of the household expenses.

25. He stated that he borrowed $80,000.00 from his parents to fund his other necessary expenses including legal fees.

26. The Respondent also attached documentation from the Financial Advisors Association of Canada ("Advocis") which showed the continuing education credits and courses that he has taken from 2018 to March 2022, some of which included content relating to ethical conduct.

27. His affidavit also indicated that he incorporated a company on January 1, 2019 in Alberta to be a contract producer for a general insurance broker and to be an independent commercial business advisor.

28. At the commencement of the proceedings held on March 23rd, the Respondent was affirmed so that he could be cross-examined on his affidavit by Enforcement Counsel, particularly with respect to his evidence regarding his financial circumstances.

29. In the course of being cross-examined, the Respondent stated that other than the house he shares with his wife, he does not own a beneficial interest in any other real property.

30. With respect to the $80,000.00 loan from his parents, he testified that there were no terms with respect to having to pay the money back by a specified date; nor any terms with respect to having to pay interest.

III. THE PARTIES' POSITIONS ON PENALTY

31. Staff submitted that the appropriate sanction to impose in this matter was as follows:

a) a suspension of at least one month, pursuant to section 24.1.1(e) of MFDA By-Law No. 1;

b) a fine in the amount of at least $25,000.00, pursuant to section 24.1.1(b) of MFDA By-Law No. 1; and

c) costs in the amount of at least $20,000.00, pursuant to section 24.2 of MFDA By-Law No. 1.

32. In their written submission, Staff submitted that:

> … the proposed sanction is in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by Members and Approved Persons. Furthermore, the proposed sanctions will prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund participants, and foster public confidence in the mutual fund industry.

33. In his written submission, the Respondent's counsel submitted that the appropriate sanction should be as follows:

a) a fine of $3,000.00;

b) costs in the amount of $20,000.00;

c) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.1.4; and

d) the Respondent will attend in-person or via videoconference on the dates set for [the Penalty Hearing].

IV. ANALYSIS AND DECISION

Authority of the Hearing Panel

34. Pursuant to section 24.1.1(i) of MFDA By-Law No. 1, if, in the opinion of a Hearing Panel, an Approved Person has failed to comply with the provisions of a by-law, rule, or policy of the MFDA, a Hearing Panel can impose any of the penalties set out in Section 24.1.1(a) – (t), including a permanent prohibition on the authority of the Approved Person to conduct securities related business and a fine, not exceeding $5,000,000.00.

35. Pursuant to section 24.2 of MFDA By-Law No. 1, the Hearing Panel has the discretion to require a Member or Approved Person to pay the whole or part of the costs of the proceeding before the Hearing Panel and any investigations relating to that proceeding.

Factors Concerning the Appropriateness of the Proposed Penalty

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

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

37. In addition to investor protection, the goals 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; *Tonnies (Re)*, 2005 LNCMFDA 7(QL), at para. 45

38. In furtherance of these goals, disciplinary sanctions imposed in the securities regulatory context are intended to restrain future misconduct. As the hearing panel in *Tonnies (Re)* stated:

> The Ontario Securities Commission has set out succinctly its role, not dissimilar to the role of this Panel, in determining penalty in *Re Mithras Management Ltd. et al* (1990), 13 O.S.C.B. 1600. The Commission stated at 1610:
>
> …[T]he role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.
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> *Tonnies (Re)*, *supra*, at para. 45

39. Sanctions imposed by hearing panels should therefore be protective and preventative to prevent likely future harm to the markets. To determine whether a sanction is appropriate, the hearing panel should consider:

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) the protection of the integrity of the MFDA's enforcement processes.

Tonnies (Re), *supra,* at paras. 44, 46

40. Hearing panels have also considered the following factors when determining an appropriate penalty:

a) the seriousness of the allegations proved against the Respondent;
b) the Respondent's past conduct, including prior sanctions;
c) the Respondent's experience and level of activity in the capital markets;
d) whether the Respondent recognizes the seriousness of the improper activity;
e) the harm suffered by investors as a result of the Respondent's activities;

f) the benefits received by the Respondent as a result of the improper activity;

g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

i) the need to deter not only those involved in the case being considered, but also any others who participate in capital markets, from engaging in similar improper activity;

j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

k) previous decisions made in similar circumstances.

Tonnies (Re), *supra*, at para. 48

41. A panel should also refer to the MFDA's Sanction Guidelines (the "Guidelines"), when determining the appropriate penalty.

42. The Guidelines, as their name suggests, are not mandatory or binding on a panel. They do, however, provide a summary of the key factors upon which hearing panels can exercise their discretion to impose sanctions in a consistent and fair manner.

43. Many of the same factors that are listed in the cases above, and which have been considered in previous decisions of hearing panels, are reflected and described in the Guidelines.

Mutual Fund Dealers Association of Canada Sanction Guidelines, dated November 15, 2018

Application to the Present Case

Seriousness of the Misconduct

44. Staff submitted that the proven misconduct in this case, although isolated to a single set of transactions with respect to one client, is nonetheless serious.

45. In their written submissions, they pointed out that in our Decision, the Panel found that despite the fact that the Respondent received information from client KM's court-appointed guardian, that KM had passed away and despite discussing the issue with the Respondent's Branch Manager and being informed that pending trades could not be processed because of this

information, the Respondent proceeded with the trades and received commissions totaling $16,279.22 as a result.

46. In our Decision we found that by processing the transactions for client KM in a manner that both benefited himself through the gain of commissions, and exposed the client to unnecessary risk, the Respondent's conduct gave rise to a conflict of interest which he failed to address in accordance with the requirements of Rule 2.1.4.

47. Staff highlighted the fact that in our Decision, we specifically found that the Respondent, after having been alerted to client KM's passing away, deliberately acted in manner that made it seem that he had not been made so aware, in correspondence he sent to guardian SE and to the Member's Estates Department on March 28, 2018 and April 3, 2018, respectively.

> *Dwyer (Re)*, MFDA File No. 202045, Decision (Misconduct) and Reasons dated January 20, 2022, at paras. 138 & 143

48. In our Decision, we also found that "the Respondent deliberately acted contrary to the advice of his Branch Manager, and did so despite having full knowledge and understanding as to why the Branch Manager said that the trades should not be processed".

> *Dwyer (Re)*, *supra*, at para. 181

49. Staff also referred to the Guidelines which state that:

> "*Deception* -- Attempts by the Respondent to conceal the misconduct or to lull into inactivity, mislead, deceive or intimidate an investor, the Member or regulatory authorities, should be considered an aggravating factor".

50. Staff submitted that in determining the appropriate penalty, therefore, the Panel should, consider our finding as to the deliberateness of the Respondent's actions to be an aggravating factor.

51. Staff submitted that the element of the client's vulnerability should also be considered as an aggravating factor for the Panel to take into account in determining the appropriate penalty.

52. In this regard, they noted that the Guidelines state:

> "*Vulnerable Investors* -- If there is evidence that the Respondent's conduct involved vulnerable investors, then this may be seen as an aggravating factor worthy of a greater sanction. The MFDA disciplinary process aims to protect the investing public and in particular vulnerable investors, such as those who are at risk due to age, disability, limited investment knowledge or other factors, and those who place a high level of trust or reliance in a Respondent. The corollary is not true however: the fact that an investor who was victimized by a Respondent is a sophisticated investor should not be a mitigating factor".

Mutual Fund Dealers Association of Canada Sanction Guidelines, dated November 15, 2018, at para. 3

53. Staff pointed out that the client in this matter, KM, was mentally incapacitated and was subject to a Trustee and Guardianship Order under the guardianship of her nephew, SE. She was, therefore, a "vulnerable investor" within the meaning of the Guidelines.

54. In response, the Respondent's counsel, in his written submission said that the allegations proved against the Respondent should not be considered serious misconduct. He submitted that the misconduct was "unintentional…" and that there "was no intentional, manipulative, fraudulent or deceptive tactics used by Mr. Dwyer".

55. He also submitted that the Respondent was transparent throughout, especially with his Branch Manager who, he submitted, condoned the Respondent's behaviour.

56. The Panel finds that this submission flies in the face of our Decision.

57. We agree with Staff's submission that the Respondent's misconduct in this case was very serious, having regard in particular to the findings in our Decision that: he was intentionally deceptive; deliberately acted contrary to the advice of his Branch Manager despite having full knowledge and understanding as to why the Branch Manager said the trades should not be processed; and did so with respect to a client whom he knew to be vulnerable, putting his own interests ahead of those of the client.

Dwyer (Re), supra, at paras. 138 – 147, 159, 166 & 181

58. In our Decision, we also found that the Respondent's conduct not only breached the conflict of interest Rule 2.1.4, it was conduct which clearly fell below the standard of conduct which Rule 2.1.1 expects Approved Persons to uphold.

Dwyer (Re), supra, at paras. 182 & 183

59. For all of these reasons we find that the Respondent's misconduct was serious.

Respondent's Past Conduct and Experience in the Capital Markets

60. Both Staff and the Respondent noted that the Respondent has not previously been the subject of an MFDA disciplinary proceeding.

61. Staff submitted, however, that having been registered as a dealing representative with the Member from October 2007 to July 2018, the Respondent was experienced in the mutual fund

industry and as an Approved Person, was required to be aware of and compliant with regulatory requirements.

62. The Panel agrees. We note that the Respondent has no previous disciplinary history, however, as an experienced individual, we find that he ought to have known better than to behave in the manner which led to these proceedings.

Recognition by the Respondent of the Seriousness of the Misconduct

63. Staff submitted that although the Respondent in his Reply to the Notice of Hearing acknowledged that he may have made a "mistake" in proceeding with the trades after learning that client KM had passed away and in ignoring guardian SE's phone call of March 23, 2018, throughout the proceedings, the Respondent maintained that his Branch Manager permitted him to proceed with the pending purchases and his actions did not give rise to a conflict of interest.

Dwyer (Re), supra, at paras. 84, 162 - 163

64. It was Staff's submission, therefore, that the Respondent has not fully recognized the seriousness of his misconduct. In making this argument, Enforcement Counsel was quick to point out that a Respondent's decision to contest allegations that have been made against them in a Notice of Hearing must not be considered by a Panel to be an aggravating factor. However, the absence of true recognition by a Respondent of the seriousness of their misconduct means that the Panel does not have that factor to consider as a mitigating factor for the purposes of determining the appropriateness of a proposed penalty.

65. In response, the Respondent's counsel submitted that the Respondent does recognize the seriousness of his conduct, is remorseful, contrite and humbled.

66. He also submitted that while his client was misguided in his actions, his actions were not intentional and that the penalty must be proportionate to the extent of moral culpability.

67. The Panel noted with some dismay that despite our Decision, the fact that in the submissions he made at the Penalty Hearing, the Respondent's counsel continued to submit that the Respondent's conduct was unintentional.

68. As noted above, not only does the Panel find that these submissions fly in the face of our Decision, they are inconsistent with the Respondent's submission that he recognizes the seriousness of his misconduct.

69. Accordingly, while recognition by a Respondent of the seriousness of their misconduct can be taken into account as a mitigating factor by a panel, we do not find those circumstances exist in this case.

Harm Suffered by Investors and Benefits Received by the Respondent

70. Staff submitted that in this matter, the client which was ultimately client KM's estate, suffered potential harm as a result of the client's assets being invested and potentially exposed to market risk while an Administrator needed to be found, appointed and the estate settled.

71. Staff acknowledged that as a result of the Respondent's trades ultimately having been reversed, there was no evidence of actual harm, however, they pointed out that the risk of harm to a client may be a relevant factor for the Panel to consider, even if actual harm did not result.

> Mutual Fund Dealers Association of Canada Sanction Guidelines, dated November 15, 2018, at p. 4

72. The Respondent stood to earn commissions of $16,279.22 as a result of the trades. Those monies were, however, ultimately clawed back by the Member.

Deterrence

73. Both the Supreme Court of Canada and MFDA hearing panels have held that deterrence is an appropriate factor to be taken into account when determining the appropriateness of a penalty.

> *Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672 SCC, at paras. 52 – 62
>
> *Tonnies (Re), supra*, at para. 47

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

75. The effect of general deterrence should advance the goal of protecting investors. A penalty should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated not only by the particular respondent, but by others in the industry.

76. As the Supreme Court of Canada stated:

> The *Oxford English Dictionary* (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s.

> 162. The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act.
>
> *Cartaway Resources Corp. (Re)*, *supra*, at 61

77. Staff submitted that given the potential for the client to sustain harm and the potential for the Respondent to gain a benefit from proceeding with the trades, the proposed sanction should be sufficient to communicate to other Approved Persons that the misconduct engaged in by the Respondent in the present case, has no place in the mutual fund industry.

78. In response, the Respondent submitted that the facts of this case do not lend themselves to general deterrence.

79. With respect to specific deterrence, the Respondent's counsel submitted that the investigative process and the financial and mental strain these proceedings have placed on the Respondent have constituted sufficient motivation for him not to repeat this type of conduct.

Other Submissions

80. The Respondent's counsel submitted that based on the length of time that has transpired from when investigative proceedings in this matter were commenced in September 2018 until the time of this Hearing, the Panel should consider the passage of time to be a mitigating factor.

81. In response, Staff first pointed out that when looking at how long the disciplinary process has taken, the start date is August 20, 2020, when the Notice of Hearing was issued, and not September 2018 as the Respondent's counsel submitted.

82. Next, Staff submitted that the legal principles which apply to the concept of delay that are applied by Courts in criminal proceedings, have no application to the regulatory proceedings in discipline hearings which are conducted pursuant to By-Law No. 1 of the MFDA.

83. The Respondent's counsel also submitted that the Respondent has been proactive and exceptional in providing assistance to the MFDA and has cooperated fully in these proceedings.

84. In reply, Staff pointed out that the Guidelines, under the heading "The Respondent's Proactive and Exceptional Assistance to the MFDA" state that Respondents are required to cooperate fully with the MFDA's investigations, to respond to requests for information in a timely and straightforward manner, and to report certain events or information to the MFDA. The Guidelines say:

> "Only proactive and exceptional assistance by a Respondent, going beyond those general requirements, should be considered a mitigating factor in imposing sanctions."
>
> Mutual Fund Dealers Association of Canada Sanction Guidelines, dated November 15, 2018, p. 5

85. In this case, Staff submitted, there was no such conduct on the part of the Respondent. The Respondent has not gone beyond the general requirements that were expected of him and, therefore, he has not provided the "proactive and exceptional assistance" which could be considered a mitigating factor by a panel when imposing sanctions.

86. The Respondent's counsel further submitted that while his client was misguided in his actions, his actions were not intentional and that the penalty must be proportionate to the extent of moral culpability.

87. He also submitted that the Respondent has "engaged in remedial activity such as: ethics training, CE courses/credits commensurate with his activities to date".

88. The Respondent's counsel also pointed to the evidence from the Member which noted that in 2021 the Respondent handled an estate file in an appropriate manner.

89. With respect to the Respondent's financial situation, the Respondent's counsel strongly urged the Panel not to impose a suspension, submitting that the Respondent's commission income has already been reduced because of these proceedings and that the fine proposed by Staff could drive the Respondent into bankruptcy.

90. With respect to the Respondent's submissions that he was unable to pay a fine, Staff pointed to the Guidelines which identify that while the Respondent's ability to pay may be a consideration in determining the appropriate monetary sanction to be imposed, it is only one of the factors to be weighed in relation to all other applicable factors, including general and specific deterrence and the need to ensure public confidence in the MFDA's disciplinary processes.

91. They noted that the Guidelines go on to say that the burden is on the Respondent to raise the issue and to provide evidence of inability to pay and that evidence of the *bona fide* inability to pay may result in the reduction or waiver of a fine or in the imposition of an installment payment plan.

92. Staff submitted, therefore, that if the Panel were inclined to consider the Respondent's ability to pay, that we take it into account as only one of the factors governing our decision on the

appropriate penalty and that we focus on issues of deterrence and promoting public confidence in the mutual fund industry.

93. Staff also submitted that if the Panel were to order installment payments, we should include an acceleration clause which provides that if a payment is missed, the entire amount becomes due and payable.

94. With respect to imposing a condition of close supervision, Staff submitted that the Panel should be clear to reflect in the Order that the obligation of close supervision is an obligation imposed on the Respondent for him to procure, and not a burden imposed on a Member.

95. Staff also submitted that if the Panel were inclined to make an Order of close supervision, it should take effect immediately as of the date of our Order, regardless of whether conditions of supervision imposed by either or both of the Alberta and Ontario Securities Commissions, continued.

96. On this issue, the Respondent's counsel submitted that the Respondent welcomes having more supervision and that the supervision he has received to date, has been a positive experience.

Previous Decisions Made in Similar Circumstances

97. Staff submitted that the following cases were helpful to assist the Hearing Panel in determining the appropriate penalty:

Case	Facts	Outcome
Davidson, Tyler (Re)	The Respondent recommended a trade in a mutual fund that unnecessarily subjected a client to a deferred sales charge schedule and generated commissions to himself. Other Factors: The Respondent received a benefit of $15,346 as a result of the DSC trade that he would not otherwise had been entitled to. The client suffered a loss of $17,200 from early DSC redemptions and $2,267 from interest incurred from a line of credit, which was repaid by the Member.	Settlement Agreement: • 1 month prohibition • $22,500 fine • $5,000 costs
Hale (Re)	The Respondent processed 18 transactions as redemptions and purchases rather than as switches to ensure the transactions counted towards sales targets established by the Member.	Settlement Agreement: • $22,500 fine • $2,500 costs

Case	Facts	Outcome
	The Respondent obtained, possessed, and used 10 pre-signed account forms. Other Factors: The clients suffered a loss as a result of the switch avoidance totaling $3,200.25, and were offered compensation by the Member. The Respondent received additional sales revenue towards his revenue target as a result of the switch avoidance.	
MacDonald, Craig (Re)	The Respondent falsified the signature of a client on two NAAFs, a redemption form, and a letter of direction, which documents he used to process transactions in the client's account. The Respondent failed to comply with the Member's policies and procedures, and instructions he received from the Member's head office, regarding the requirements necessary to process a wire transfer request and protect against wire transfer fraud by third parties. Other Factors: The Respondent, by failing to comply with the Member's requirements for wiring monies, ended up sending client money to a fraudster posing as the client. The client suffered a loss of $8,396.59 that was reimbursed by the Member.	ASF with uncontested penalty: • One year suspension • Complete an ethics course • $10,000 fine • $2,500 costs
Del Plavignano (Re)	The Respondent admitted that he: • Processed two transactions without client authorization. • Completed KYC information on account form without having met or discussed the information with the client. • Failed to comply with two Member directives to contact a client to review their KYC information and suitability of investments. • Falsely represented to the Member that the client reviewed and approved the risk tolerance for a client's account.	Settlement Agreement: • $5,000 fine • 18 month prohibition • $2,500 costs
Muhima (Re)	The Respondent admitted that he: 1. Signed the signature of a client on an account form and submitted it for processing.	Settlement Agreement: • 1 year prohibition • $3,500 fine • $2,500 costs

Case	Facts	Outcome
	2. Failed to comply with a Member directive to contact a client to review the suitability of holdings in the account. 3. Failed to learn the essential facts of a client when he completed KYC information without having met with the client.	
Fialho (Re)	The Respondent admitted that he: 1. Submitted 4 trades without sufficient authorization or evidence of instructions from clients. 2. Attempted to process two trades in reliance on Limited Trading Authorizations in contravention from a direction from the Member prohibiting the use of LTAs. 3. Submitted 4 client account forms with signatures or initials of someone other than the account holder, did not take steps to ensure the forms had been signed by the clients, and processed a trade based on instructions received from someone other than the account holder. 4. Provided notes to MFDA Staff that purported to demonstrate he had obtained client instructions to process a trade when he knew or ought to have known he took instructions from someone other than the client. <u>Other Factors:</u> There was no client loss or evidence of financial benefit received by the Respondent.	Settlement Agreement: • 2 year prohibition • $5,000 fine

98. In reviewing these decisions with the Panel, Enforcement Counsel acknowledged the unique factual circumstances of the case before us, but submitted that the decisions which are set out in the chart above, were nonetheless sufficiently similar to be of assistance to the Panel in deciding the appropriate penalty.

99. Enforcement Counsel also pointed out that those decisions involved either settlement agreements or agreed statements of fact with uncontested penalties and were, therefore, distinguishable to the extent that they had mitigating factors which do not exist in this matter.

Costs

100. Staff submitted a Bill of Costs in the amount of $27,350.00.

101. In their oral submissions, Staff acknowledged that the amount set out in the Bill of Costs is somewhat arbitrary in the sense that Staff does not charge their time on an hourly basis. Nonetheless, the Bill of Costs provides evidence which reflects the fact that significant time and effort has been expended by the MFDA to conduct these proceedings.

102. Staff submitted that the amount of costs was attributable, among other things, to the length of the Hearing – four days for the Hearing on Misconduct alone – and the requirement to prepare witnesses to testify, provide disclosure and file submissions.

103. Staff noted that they were only seeking $20,000.00 as a partial recovery of the effort and costs involved with respect to proceeding with this matter on a contested basis.

104. Respondent's counsel did not dispute Staff's request to impose costs in the amount of $20,000.00.

V. CONCLUSION

105. The Panel has determined that the following penalty is appropriate, having regard to the evidence and the submissions both written and oral, of counsel for both parties:

a) a three-month suspension;
b) a fine in the amount of $12,500.00;
c) costs in the amount of $20,000.00;
d) the fine and costs to be paid on an installment plan to be agreed upon between the parties, with the condition that if the Respondent misses an installment, the entire amount of fine and costs becomes immediately due and owing; and
e) the Respondent is required to be subjected to strict supervision from the date of this Order until December 31, 2022.

106. In reaching our determination with respect to the appropriate penalty, the Panel finds that for the reasons set out in our Decision of January 20, 2022 the Respondent's misconduct was extremely serious.

107. In our view, therefore, a three month suspension is a necessary sanction to demonstrate the seriousness of the Respondent's misconduct and to ensure both specific and general deterrence.

108. An Order of close supervision is also necessary for the protection of the investing public. We emphasize that this sanction does not impose an obligation on any Member with whom the Respondent is registered; rather, it is an obligation which we are imposing on the Respondent to identify to the Member with whom he registers, once his suspension is complete.

109. It appears from the evidence adduced by the Respondent that the Member with whom he is currently registered may well be willing to employ him again when the period of suspension imposed by this decision, ends on July 3, 2022. Consistent with the terms of our decision, once the Respondent re-registers he will have to do so on the condition that he be subject to strict supervision until December 31, 2022.

110. With respect to the decisions by other MFDA Panels which Staff submitted are sufficiently similar to guide the Panel in determining the appropriate sanction in this matter, we agree that the facts of those decisions, while not identical to the facts of this case, are nonetheless sufficiently similar to be of guidance.

111. We note that the sanctions which were agreed upon in those decisions reflect the seriousness of the misconduct admitted to by the Respondent in each of those cases in a variety of ways - whether by the imposition of a suspension, a fine, or both.

112. With respect to the Respondent's submission on "delay", we find those submissions were not supported by any authority and in any event, the Respondent has not been subjected to undue delay in these proceedings.

113. We also find that while the Respondent appropriately co-operated with the MFDA in its investigation there is no evidence of "proactive and exceptional assistance" on his part, going beyond the general requirements, which we could consider to be a mitigating factor.

114. We have taken the Respondent's arguments about his inability to pay into consideration in deciding the amount of the fine and by allowing him to pay the fine and costs, in installment payments.

115. In determining the appropriate sanction, we also note that the Respondent has become licensed to sell insurance. The suspension we are imposing does not apply to his ability to conduct business in that regard, given the Panel's jurisdiction.

116. Our determination as to costs reflects the fact that both parties were in agreement as to the amount which we should award.

117. This sanction is in keeping with the MFDA's purpose to enhance investor protection and strengthen public confidence in the Canadian Mutual Fund industry by ensuring high standards of conduct on the part of Members and Approved Persons. We find it is a necessary sanction in order to prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants and foster public confidence in the mutual fund industry.

118. The Panel thanks the parties and their counsel for their helpful submissions and participation in these proceedings.

DATED this 6th day of July, 2022.

"Sherri Walsh"
Sherri Walsh
Chair

"Birju Shah"
Birju Shah
Industry Representative

"Annette Stephens"
Annette Stephens
Industry Representative

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