



**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: Leszek Dziadecki**

Heard: January 19, 2021 by electronic hearing in Toronto, Ontario

Decision: January 19, 2021

Reasons for Decision: January 22, 2021

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Emily Cole  
Jeffrey Page  
Timothy Pryor

Chair  
Industry Representative  
Industry Representative

Appearances:

David Barbaree	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Leszek Dziadecki	)	Respondent, in person
	)	
	)	

## **I. INTRODUCTION**

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement dated January 14, 2021 (“Settlement Agreement”) between staff of the MFDA (“Staff”) and Leszek Dziadecki (“Respondent”).
2. After reviewing the Settlement Agreement and the material filed by Staff and hearing the submissions of counsel for Staff, the Hearing Panel accepted the Settlement Agreement attached and signed an order reflecting our approval. These are the reasons for our decision.

## **II. CONTRAVENTIONS**

3. Based on the Agreed Facts set out below the Respondent admits that between August 2013 and August 2018, he obtained, possessed, and in some instances, used to process transactions, nine pre-signed account forms in respect of three clients, contrary to MFDA Rule 2.1.1.

## **III. PROPOSED SANCTIONS**

4. Staff and the Respondent agree and consent to the following proposed sanctions:
  - a) the Respondent shall pay a fine in the amount of \$7,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No.1;
  - b) the Respondent shall be prohibited from acting as a branch manager or in a supervisory role with a Member of the MFDA for a period of six months, pursuant to s. 24.1.1(e) of MFDA By-law No.1;
  - c) prior to acting as a branch manager or in a supervisory role in the future, the Respondent shall successfully complete a branch manager’s course offered by the Canadian Securities Institute or the Investment Funds Institute of Canada, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
  - d) 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;
  - e) the Respondent shall in the future comply with MFDA Rule 2.1.1.

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

##### **Registration History**

5. Commencing in 1996, the Respondent was registered in the securities industry.
6. Between May 2004 and October 1, 2018, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Global Maxfin Investments Inc. (the “Member”), a Member of the MFDA.
7. In May 2004, the Member designated the Respondent as a branch manager.
8. In October 2016, the Respondent ceased acting as a branch manager.
9. On October 1, 2018, the Respondent resigned, and he is not currently registered in the securities industry in any capacity.
10. At all material times, the Respondent conducted business in the Mississauga, Ontario area.

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

11. At all material times, the Member’s policies and procedures prohibited its Approved Persons from using pre-signed account forms.
12. Between August 2013 and August 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 9 pre-signed account forms in respect of 3 clients.
13. The pre-signed account forms consisted of order forms and registered education savings plan withdrawal forms.

##### **The Member’s Investigation**

14. In or around September 2018, during the course of a routine branch review, the Member identified two account forms with potential concerns regarding client signatures.
15. The Member commenced an investigation into the Respondent’s conduct. The Member reviewed all client files serviced by the Respondent and identified the account forms that are the subject of this Settlement Agreement.

16. On September 27, 2018, the Member advised the Respondent that as a result of the findings of its investigation, it would be imposing the following on the Respondent: 6 months of close supervision, a \$5,000 fine, a 5% commission reduction for a period of time, and a warning letter.

17. On October 1, 2018, the Respondent resigned from the Member before any of the measures set out above in paragraph 16, including the payment of the fine and any deduction of commissions, could be implemented.

18. In December 2018, the Member sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had asked clients to sign incomplete or blank signed forms. No clients raised any concerns in response to this inquiry.

19. In January 2019, the Member sent letters to the clients in respect of whom the Respondent obtained or used the pre-signed account forms that are the subject of this Settlement Agreement in order to determine whether the clients had authorized all transactions in their accounts. No clients raised any concerns to the Member in response to its inquiry.

### **Additional Factors**

20. The Member has confirmed to Staff that the Respondent did not receive any financial benefit from the conduct set out above.

21. There is no evidence of client loss or lack of authorization for the underlying transactions.

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

23. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

## **V. ANALYSIS**

### **A. Jurisdiction of the Hearing Panel**

24. A Hearing Panel is authorized to either accept or reject a settlement agreement.

25. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing 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.”

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17.

*Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16 at para 37

26. Settlements are to be encouraged. They make a significant contribution to meeting the MFDA’s primary objective of investor protection by providing a practical and efficient way of addressing misconduct in the securities industry. Where the Respondent takes responsibility and admits his misconduct and the parties can agree upon appropriate sanctions, settlements can save time and conserve the regulator’s limited resources. Settlements also provide certainty and are likely to result in greater compliance with the sanctions imposed.

*British Columbia (Securities Commission v. Seifert)*, [2006] B.C.J. No 225 at paras. 48-49 (S.C.), aff’d [2007] B.C.J. No 2186 at para. 31 (C.A.)

## **B. The Seriousness of the Misconduct**

27. Obtaining pre-signed forms is a breach of MFDA Rule 2.1.1. It is serious misconduct.

28. As the hearing panel in *Price (Re)* explained:

Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading....

At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft, or other forms of harmful conduct towards a client...

Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client’s signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.

*Price (Re)*, 2011 CanLII 72458 at paras. 122-124.

29. As a Branch manager, the Respondent ought to have known better. "... [A] Branch Manager is expected to set an example and should be held to a higher standard". This is an aggravating factor in determining appropriate sanctions.

*Bast (Re)*, MFDA File No 201956, Central Region, October 22, 2019 at para 22.

30. The Respondent obtained, possessed and, in some instances used to process transactions, nine pre-signed forms in respect of three clients. The pre-signed account forms consisted of order forms and registered education savings plan withdrawal forms.

31. It is well-established that obtaining pre-signed forms after the publication of MFDA Bulletin #0661-D is an aggravating factor. The Respondent obtained five of the pre-signed forms post-Bulletin.

*Owen (Re)*, 2017 LNCMFDA 287 at para 44.

32. There was no evidence of client harm or a lack of authorization by the clients.

### **C. Mitigating Factors**

33. We considered the following mitigating factors:

- a) The Respondent is remorseful and apologized to the Hearing Panel;
- b) The Respondent recognizes the seriousness of the misconduct;
- c) The Respondent did not receive any financial benefit from his misconduct;
- d) Investors did not suffer any harm from the Respondent's misconduct;
- e) The Respondent has not been the subject of any prior MFDA disciplinary proceedings.

34. By entering into a settlement agreement, the Respondent has saved the MFDA time, resources, and the expense of conducting a contested hearing.

35. In all these circumstances, the proposed penalties are within the reasonable range of appropriateness.

**D. Costs**

36. The costs award is appropriate and consistent with previous MFDA decisions.

**VI. CONCLUSION**

37. We are satisfied that the proposed sanctions, including the six-month prohibition against the Respondent acting as a branch manager or in a supervisory role with a Member of the MFDA, the \$7,000 fine and \$2,500 in costs will serve as specific deterrence to the Respondent and general deterrence to others in the industry who may contemplate engaging in similar misconduct in the future.

38. Staff provided four MFDA decisions which addressed similar misconduct: *Malhotra (Re)*, MFDA File No. 201718, Central Region, July 10, 2017, 2016, *Fenton (Re)*, MFDA File No. 201607, Central Region, August 8, 2016, *Balbiran (Re)*, MFDA File No. 201857, Central Region, October 23, 2018, *Garofalo (Re)*, 2016 CanLII 59833 at para. 13.

39. Based on a review of these cases and taking into consideration the factors discussed above, we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

40. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against the Respondent.

**DATED** this 22<sup>nd</sup> day of January, 2021.

“Emily Cole”

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Emily Cole  
Chair

“Jeffrey Page”

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Jeffrey Page  
Industry Representative

“Timothy Pryor”

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Industry Representative