



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: David Terrance Fredrickson

Heard: March 18, 2019 in Winnipeg, Manitoba
Decision: March 18, 2019
Reasons for Decision: May 23, 2019

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Diane Jaspers
Richard Sydenham

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Curtis Unfried)	Counsel for the Respondent
)	
)	
David Fredrickson)	Respondent, in person
)	
)	

I. BACKGROUND

1. The Mutual Fund Dealers Association of Canada (“MFDA”) commenced a disciplinary proceeding in respect of David Terrance Fredrickson (“Respondent”) by Notice of Hearing dated March 8, 2018, in which the following allegation was made against the Respondent:

Allegation #1: Between June 1, 2011 and January 4, 2016, the Respondent, or his assistants for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 44 pre-signed account forms in respect of 21 clients, contrary to MFDA Rule 2.1.1.

2. Appearances in this matter took place by teleconference on May 23, 2018, July 16, 2018, August 30, 2018 and November 9, 2018 before a Hearing Panel of the MFDA’s Prairie Regional Council (the “Panel”).

3. Following the appearance on November 9, 2018, the Respondent was ordered to file and serve a Reply to the Notice of Hearing by no later than January 8, 2019. The hearing of the matter on its merits was ordered to take place from March 18, 2019 to March 20, 2019, in Winnipeg, Manitoba.

4. The Respondent filed his Reply in accordance with the Panel’s Order.

5. On March 8, 2019 the MFDA Hearings Coordinator issued a News Release advising the public of the date, time and location of the Hearing on its merits.

6. The News Release also identified that the dates for the Hearing were changed to include March 18 and 19, 2019, only.

II. SETTLEMENT

7. At the commencement of the proceedings on March 18, 2019, the Panel was presented with an executed Settlement Agreement which had been reached between Staff and the Respondent.

8. The Panel was advised that the Settlement Agreement was prepared in accordance with s. 24.4 of MFDA By-law No. 1 with the exception that a Notice of Settlement Hearing had not been prepared and published in accordance with Rule 15.2(1) of the MFDA Rules of Procedure.

9. Rule 15.2(1) provides as follows:

15.2 Notice and Public Access

1. Except where a settlement is reached after the commencement of the hearing of a proceeding on its merits, a Hearing Panel shall not consider a Settlement Agreement unless at least 10 days notice of the settlement hearing has been given by the Corporation in the same manner as a notice of penalty pursuant to section 24.5 (Publication of Notice and Penalties) of MFDA By-law No. 1 specifying:

- a. the date, time and place of the settlement hearing; and
- b. the purpose of the settlement hearing with sufficient information to identify the Member or person involved and the general nature of the allegations which are the subject matter of the settlement.

10. Staff requested that the Panel waive this requirement and directed the Panel to review Rules 1.3.1 and 1.5(1)(b) of the Rules of Procedure. Those rules state:

1.3 General Principles

1. These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness.

1.5 General Powers of a Panel

1. A Panel may:
 - a. exercise any of its powers under these Rules on its own initiative or at the request of a party;
 - b. waive or vary any of these Rules at any time, on such terms as it considers appropriate.

11. Having reviewed these Rules and heard submissions from Staff, the Panel determined that it was appropriate to waive the provisions of Rule 15.2 such that acceptance of the Settlement Agreement could be considered by the Panel on the first day set for the Hearing on the Merits.

12. We also note that such waiver may not even be required in this case. Rule 15.2(1) specifically starts with the words: "Except where a settlement is reached after the commencement of the hearing of a proceeding on its merits,...". In our view this wording is intended to apply to circumstances such as what happened in this case where a settlement was reached between the

parties at the last minute or in any event before the Panel had made a decision following holding a contested hearing on the merits.

13. The reason for providing notice, it should be remembered, is to give the parties and the public sufficient information about a hearing to allow for appropriate participation and attendance, respectively.

14. The Panel is of the view that that has happened in this case.

15. Looking at the notice which was given, we confirm that the MFDA issued a public Notice of Hearing on March 8, 2018 which detailed the allegations against the Respondent.

16. On November 9, 2018 this Panel issued an Order which gave notice of the date, time, and location of the Hearing on the Merits.

17. These details were contained in a News Release which was issued by the MFDA on November 13, 2018.

18. On March 8, 2019, the MFDA published a further News Release which identified that the Hearing of this matter on the Merits which was previously scheduled for March 18 through 20, 2019 would now be taking place on March 18 and 19, 2019. The News Release specified the date, time and place for the Hearing.

19. In the Panel's view, therefore, the public has had sufficient notice of these proceedings such that it is appropriate to grant Staff's requested to waive the strict provisions of Rule 15.2 of the Rules of Procedure, if waiver is even required, as per our comments above.

20. This approach is consistent with the approach which has been adopted by other MFDA Hearing Panels in similar circumstances.

Jennifer Lynn Kilins (Re), MFDA File No. 201109, Hearing Panel of the Central Regional Council, Reasons for Decision dated February 9, 2012, at paras 8-15

21. This Panel, therefore, proceeded to hold the Hearing on March 18, 2019 as a Settlement Hearing. The Hearing was attended by counsel for both the MFDA and the Respondent. The Respondent also attended in person.

22. At the conclusion of the Hearing, the Panel accepted the Settlement Agreement. These are our Reasons for Decision.

III. CONTRAVENTIONS

23. In the Settlement Agreement the Respondent admitted to the following violation of the By-laws, Rules or Policies of the MFDA:

- a) between January 4, 2012 and September 17, 2015, the Respondent, or his assistants for whom he was responsible, obtained, possessed, and in some instances, used to process transactions, 40 pre-signed account forms in respect of 11 client accounts, contrary to MFDA Rule 2.1.1.

24. As Staff pointed out, this admission varies only slightly from the allegation which was set out in the Notice of Hearing.

IV. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine in the amount of \$10,000.00 pursuant to s. 24.1.1.(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500.00 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the payment of the fine and costs shall be made to and received by MFDA Staff as follows:
 - i) \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Panel;
 - ii) \$10,000 (Fine) in certified funds on or before the last business day of the 3rd month following the date of the acceptance of the Settlement Agreement by the Panel;
- d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- e) the Respondent will attend in person, on the date set for the Settlement Hearing.

V. AGREED FACTS

26. The agreed facts are set out in the Settlement Agreement at paragraphs 7 through 25 as follows:

III. AGREED FACTS

Registration History

7. The Respondent has been registered in the mutual fund industry commencing in or around 1995. The Respondent states that he has been licensed in the insurance industry since 1975.

8. Since August 2001, the Respondent has been registered in Manitoba as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA.

9. At all material times, the Respondent conducted business in the Winnipeg, Manitoba area.

Pre-Signed Account Forms

10. At all material times, Quadrus’ policies and procedures prohibited its Approved Persons, including the Respondent, from obtaining, holding, or using pre-signed account forms.

11. Between January 4, 2012 and September 17, 2015, the Respondent, or his assistants, obtained, possessed, and in 37 instances, used to process transactions, 40 pre-signed account forms in respect of 11 client accounts.

12. The Respondent states that one of the assistants was an employee of Quadrus, but accepts that he is ultimately responsible for the actions of the assistants.

13. The pre-signed account forms consisted of:

- a) 2 pre-authorized chequing forms;
- b) 15 redemption forms;
- c) 2 subsequent investment forms;
- d) 4 RESP educational assistance payment forms;
- e) 14 switch / conversion forms; and
- f) 3 systematic instruction forms.

Quadrus’ Investigation

14. On or about January 8, 2016, an assistant of the Respondent, AM, submitted an account form to Quadrus for processing. Quadrus believed that the form was a pre-signed account form that had been submitted in contravention of MFDA Rule 2.1.1. The form submitted by AM was ultimately determined not to be a pre-signed account form and does not form part of this Settlement Agreement.

15. On the basis of the account form submitted by AM, Quadrus commenced an investigation and identified the pre-signed account forms that are the subject of this Settlement Agreement.

16. As part of its investigation, Quadrus sent letters to all the clients serviced by the Respondent to determine if any of the transactions in the clients’ accounts were unauthorized.

17. The clients contacted by Quadrus did not report any complaints or concerns regarding the actions of the Respondent.

18. The Respondent states, and has provided file notes to support, that all the transactions relating to the use of pre-signed account forms were authorized by the clients.

19. On or about January 28, 2016, Quadrus issued a warning letter to the Respondent for obtaining and using pre-signed account forms, and placed him on close supervision for a period of one (1) year. The Respondent remains under close supervision pending resolution of the MFDA proceedings into this matter. Quadrus also ordered the Respondent to review and successfully complete various online learning modules, which he completed on or about February 2016.

Additional Factors

20. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct 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.

21. The Respondent states that the pre-signed account forms that form the subject of this Settlement Agreement were obtained for the convenience of the clients in question.

22. The Respondent has cooperated fully with the MFDA's investigation into his conduct.

23. The Respondent has not previously been the subject of MFDA disciplinary proceedings or other disciplinary proceedings with respect to the securities industry. The Respondent states that he has never been subject to any disciplinary proceedings with respect to his insurance license since 1975.

24. The Respondent states that he has corrected his practices going forward, including with respect to the supervision of assistants, to ensure his practice is compliant with MFDA Rules.

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

Settlement Agreement dated March 18, 2019

27. At the Hearing, Staff and Counsel for the Respondent were in agreement that the Panel could also take into consideration as an agreed fact, that there was no evidence that any client suffered harm as a result of the conduct which was the subject of these proceedings.

VI. ANALYSIS

Role of the Panel

28. A Hearing Panel has two options when considering a Settlement Agreement. It shall either accept the Settlement Agreement or reject it.

MFDA By-law No. 1, s.24.4.3

29. The role of a Hearing Panel at a Settlement Hearing is fundamentally different from the role of a Panel at a Contested Hearing.

30. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*, [1999] 1 DACD No. 17 at p.12:

“...while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel ‘will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.’” (in *re Milewski*, [1999] I.D.A.C.D. No. 17.)

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

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

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

32. At the Hearing of this matter, counsel for both parties made it clear to the Panel that the Settlement Agreement in this case was reached after significant negotiations had taken place between them.

33. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was further articulated by the British Columbia Court of Appeal:

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing.”

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

34. Although the *Seifert* decision dealt with an agreement that was before the British Columbia Securities Commission, the case has been frequently cited by Hearing Panels in MFDA Settlement Hearings.

Factors Concerning Acceptance of a Settlement Agreement

Appropriateness of the Proposed Penalty

35. Hearing Panels have repeatedly expressed the view that generally, settlement agreements should be accepted bearing in mind the following criteria:

- a) That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
- b) That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
- c) That the agreement addresses the issues of both specific and general deterrence;
- d) That the agreement is likely to prevent the type of conduct set out in the facts;
- e) That the agreement will foster confidence in the integrity of the Canadian capital markets;
- f) That the agreement will foster confidence in the integrity of the MFDA; and
- g) That the agreement will foster confidence in the regulatory process itself. ...

Sterling Mutuals Inc. (Re), *supra*, at para.36

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

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

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 v British Columbia (Superintendent of Brokers), *supra*, at paras.59 & 68

38. In determining the appropriateness of a proposed penalty, Hearing Panels also frequently cite the decision in *Breckenridge (Re)*, where the Panel stated that sanctions "... should be

preventative, protective and prospective in nature ...” taking into account the following considerations:

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

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38, at paras. 75 &76

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

- a) the seriousness of the allegations proved against the respondent;
- b) the respondent’s experience in the capital markets;
- c) the level of the respondent’s activity in the capital markets;
- d) the harm suffered by investors as a result of the respondent’s activities;
- e) the benefits received by the respondent as a result of the improper activity;
- f) the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- g) the damage caused to the integrity of the capital markets in the jurisdiction by the respondent’s improper activities;
- h) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- i) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- j) previous decisions made in similar circumstances.

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

MFDA Sanction Guidelines

40. On November 15, 2018, the MFDA issued Sanction Guidelines to assist both Staff and Respondents in conducting disciplinary proceedings and negotiating settlement agreements and to assist Hearing Panels in determining the fair and efficient disposition of settled and contested disciplinary proceedings, having regard to the imposition of appropriate sanctions.

41. The MFDA Sanction Guidelines are not mandatory and are intended to provide guidance to a Hearing Panel. The Sanction Guidelines state, under the heading “Purpose of the Sanction Guidelines”:

“... The determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. The Sanction Guidelines are intended to provide a summary of the key factors upon which discretion may be exercised consistently and fairly in like circumstances, but are not binding on Hearing Panels. The list of key factors in the Sanction Guidelines is not exhaustive, and Hearing Panels may consider other aggravating and mitigating factors as appropriate.

Hearing Panels should always exercise judgement and discretion, and consider appropriate aggravating and mitigating factors in determining appropriate sanctions in every case. In addition, Hearing Panels should identify the basis for the sanctions imposed in the Reasons for Decision.”

Excerpts from the MFDA Sanction Guidelines

42. In cases involving the type of misconduct that occurred in the present case, the factors in the Sanction Guidelines which are relevant to the Panel’s decision include:

- a) the seriousness of the allegations proved against the Respondent;
- b) the Respondent’s experience in the industry;
- c) the Respondent’s recognition of the seriousness of the misconduct;
- d) client harm; benefits received by the Respondent;
- e) general and specific deterrence;
- f) previous decisions made in similar circumstances; and
- g) whether a sanction was imposed on the Respondent for the same conduct by the Member.

Application in the Present Case

Seriousness of the Allegations

Pre-Signed Account Forms

43. The Respondent's misconduct in this matter was serious: his assistants for whose actions he was responsible, obtained, possessed and in 37 instances, used to process transactions, 40 pre-signed account forms in respect of 11 client accounts, contrary to MFDA Rule 2.1.1.

44. MFDA Rule 2.1.1 is a broad rule that encompasses a variety of misconduct. It prescribes the standard of conduct applicable to registrants in the mutual fund industry. It requires that an Approved Person, among other things:

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

45. The Rule encompasses the fundamental obligations of all registrants in the securities industry and is designed to protect the public interest.

Price (Re), MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011 at para 118

46. Although the terms "business, conduct or practice unbecoming", "good faith"; and "high standards of ethics" are not defined in the Rules, the Courts have held that these are concepts which fall within a Hearing Panel's specialized knowledge. As stated by Cory, J. (as he then was) in *Re Milstein and Ontario College of Pharmacy et al (No. 2)*:

One of the essential indicia of a self-governing profession is the power of self-discipline. That authority is embodied in the legislation pertaining to the profession. The power of self-discipline perpetuated in the enabling legislation must be based on the principle that members of the profession are uniquely and best qualified to establish the standards of professional conduct. Members of the profession can best determine whether the conduct of a fellow member has fallen below the requisite standards and determine the consequences. The peers of the professional person are deemed to have and, indeed, they must have special knowledge, training and skill that particularly adapts them to formulate their own professional standards and to

judge the conduct of a member of their profession. No other body could appreciate as well the problems and frustrations that beset a fellow member.

Re Milstein and Ontario College of Pharmacy et al. (No. 2) (1977), 13 O.R. (2d) 700 (Ont. Div. Ct.) at page 7 (Quicklaw), varied on other grounds 20 O.R. (2d) 283 (C.A.), leave to appeal to the SCC dismissed, [1992] SCCA No. 85

47. Further, as Roscoe J. stated in *Ripley v Investment Dealers Association (Business Conduct Committee)*:

. . . to require that evidence be given in proof of such issues of basic ethics and honesty would be an affront to the common sense, experience and intelligence of the members of every professional Disciplinary Committee.

Ripley v Investment Dealers Association (Business Conduct Committee), [1990] NSJ No. 295 (NSSC) at page 16 (Quicklaw), affirmed [1991] NSJ No. 452 (NSCA)

48. The MFDA has made clear to Approved Persons since October 31, 2007 in both MFDA Staff Notices and Bulletins, that possessing and using pre-signed and altered account forms is contrary to the obligations imposed by Rule 2.1.1.

Member Staff Notice 0066: Pre-Signed Forms, dated October 31, 2007 (updated March 4, 2013)
MFDA Bulletin #0661-E: Signature Falsification, dated October 2, 2015

49. Hearing Panels have consistently held that obtaining or using pre-signed forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

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

50. The use of pre-signed forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation. As the Hearing Panel explained in *Price (Re)*:

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), supra at paras 122-124

51. The prohibition on the use of pre-signed forms applies regardless of whether:
- a) the client was aware, or authorized the use, of the pre-signed forms; and
 - b) the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

Byce (Re), supra at para 8

The Respondent's Experience in the Securities Industry

52. The Respondent has been registered in the mutual fund industry since in or around 1995 and has been registered with the Member, Quadrus Investment Services Ltd., as a mutual fund sales person in Manitoba, since August 2001.

53. Approved Persons are expected to be familiar with the requirements imposed on them by their regulator and the Members who allow for their registration.

O'Connor (Re), MFDA File No. 201756, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated October 31, 2018, at para 72

54. The Panel finds that the Respondent ought to have been aware of the prohibition against using pre-signed account forms as required by both the MFDA and the Member.

55. At the same time, the Panel notes that in his long career the Respondent has had no prior disciplinary history with the MFDA.

The Respondent's Recognition of the Seriousness of the Misconduct

56. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct. He has, in particular, acknowledged his responsibility for the actions of his assistants.

57. He has also avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing.

58. Further, he has stated that he has corrected his practices going forward including with respect to the supervision of assistants, to ensure his practice is compliant with MFDA Rules.

Client Harm; Benefits Received by the Respondent

59. As set out above, at the hearing of this matter, the parties confirmed that there was no evidence of any client harm having occurred as the result of the Respondent's actions.

60. The Respondent stated that the pre-signed account forms that are the subject of the Settlement Agreement were obtained solely for the convenience of the clients in question.

61. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in these proceedings, above and beyond any commissions and fees that he would ordinarily have been entitled to receive had the transactions been carried out in the proper manner.

62. There was no evidence of unauthorized transactions; nor did any client raise any complaints or concerns in response to audit letters they received from the Member regarding the transactions in question.

Deterrence

63. Both the Supreme Court of Canada in *Cartaway Resources Corp.* and MFDA Hearing Panels have held that it is appropriate for deterrence to be among the factors taken into account when determining penalty.

Cartaway Resources Corp. (Re), [2004] 1 SCR 672 (SCC) at paras 52 – 62 (“*Cartaway Resources*”)
Tonnies, supra at para. 47

64. The effect of general deterrence should advance the goal of protecting investors. As a result, the penalty levied should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry. As the Supreme Court of Canada stated in *Cartaway Resources*:

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 . . . 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...

Cartaway Resources, supra, at para. 61

65. The Panel is satisfied that a fine of \$10,000 and costs of \$2,500 is a serious penalty which will be sufficient to achieve the goals of specific and general deterrence, having regard to the facts described above.

Previous Decisions in Similar Cases

66. Staff pointed the Panel to the following cases which, he submitted, were sufficiently similar for the Panel to consider in determining the appropriateness of the penalty agreed upon by the parties in this case:

CASE	FACTS	OUTCOME
<i>Sutton Akers (Re)</i>	<ul style="list-style-type: none"> • The Respondents, a father-daughter team, collectively obtained, maintained, and used to process transactions, 35 pre-signed forms. • The Member imposed a fine of \$2,000 to the Respondents. • The Respondents were registered in 2001 and 2006, respectively. • No forms were post-bulletin. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • A joint fine of \$10,000 • Costs of \$2,500
<i>Gleeson, (Re)</i>	<ul style="list-style-type: none"> • The Respondent obtained, possessed, and in some instances, used, 34 pre-signed forms in respect of 8 clients • The Respondent had been registered since 2000. • No forms were post-bulletin. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • A fine of \$9,000 • Costs of \$2,500
<i>Duffey (Re)</i>	<ul style="list-style-type: none"> • The Respondent, or his assistant, altered 6 account forms. • The Respondent, or his assistant, obtained, possessed, and in some instances, used, 40 pre-signed forms. • The Respondent had been registered since 2001. • No forms were post-bulletin. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • A fine of \$13,000 • Costs of \$2,500

CASE	FACTS	OUTCOME
<i>Plunkett (Re)</i>	<ul style="list-style-type: none"> • The Respondent altered 3 account forms. • The Respondent, or his assistant, obtained, possessed, and used 33 pre-signed forms. • The Respondent had been registered since 1997. • No forms were post-bulletin. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • A fine of \$11,250 • Costs of \$2,500

Sutton Akers (Re), MFDA File No. 201549, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated January 19, 2016

Gleeson (Re), MFDA File No. 201723, Hearing Panel of the Central Regional Council, Decision and Reasons dated July 10, 2017

Duffey (Re), MFDA File No. 201686, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 27, 2017

Plunkett (Re), MFDA File No. 201682, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated January 17, 2017

67. The Panel has considered these cases in determining that the proposed penalty in this matter falls within the reasonable range of appropriateness.

Sanctions Imposed by the Member

68. The Panel also notes that the Respondent was required by the Member to complete various online learning modules by February 2016 and has been required to remain under close supervision since January 28, 2016 to the date of the Panel’s Order. The Panel agrees with the submission by Respondent’s counsel that the close supervision in particular, was a form of discipline.

VII. CONCLUSION

69. Having reviewed the Settlement Agreement and having heard oral submissions from both Staff and counsel for the Respondent and from the Respondent himself, the Panel is satisfied that the proposed penalty which is set out in the Settlement Agreement falls within a reasonable range of appropriateness.

70. We find that the penalty is both reasonable and proportionate, having regard to the nature and extent of the Respondent’s misconduct and all of the circumstances.

71. The penalty will deter the Respondent and other Approved Persons from engaging in the type of conduct that is the subject of this matter and will advance the public interest and the

MFDA's objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

72. Accordingly, we accept the Settlement Agreement.

DATED this 23rd day of May, 2019.

“Sherri Walsh”

Sherri Walsh

Chair

“Diane Jaspers”

Diane Jaspers

Industry Representative

“Richard Sydenham”

Richard Sydenham

Industry Representative

DM 676859