



**IN THE MATTER OF
THE MUTUAL FUND DEALER RULES**

and

Robert Jason Alexander Fulton

Heard: March 6, 2023 by electronic hearing in Toronto, Ontario

Decision: March 6, 2023

Reasons for Decision: June 29, 2023

REASONS FOR DECISION

Hearing Panel of the Ontario District Hearing Committee:

Joan Smart
Eugene Park
Colleen Waring

Chair
Industry Representative
Industry Representative

Appearances:

Michael A. M. Mantle)	Enforcement Counsel for the New Self-
)	Regulatory Organization of Canada
)	(Mutual Fund Division)
)	
Robert Fulton)	Respondent
)	
)	

I. INTRODUCTION

1. By Notice of Settlement Hearing, dated December 14, 2022, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced proceedings against Robert Jason Alexander Fulton (the “Respondent”) indicating that on February 16, 2023, a Settlement Hearing would take place by electronic hearing, at which a Hearing Panel would be asked to consider whether it should accept a settlement agreement, dated December 14, 2022, (the “Settlement Agreement”) entered into between staff of the MFDA (“Staff”) and the Respondent. At the request of the Respondent, the Settlement Hearing was subsequently rescheduled to March 6, 2023.

2. At the Settlement Hearing on March 6, 2023, which was held electronically by videoconference, the Hearing Panel, after hearing submissions of Staff counsel and the Respondent and considering the Settlement Agreement, decided to accept it. These are our reasons for that decision.

II. THE RESPONDENT’S ADMISSION OF CONTRAVENTIONS

3. The Respondent admitted to the following violations of MFDA Rule 2.1.1:
- a) Between February 2019 and April 2020, the Respondent, or his assistant for whom he was responsible, altered and used to process transactions, 3 account forms in respect of 4 clients by altering information on the account forms without having the clients initial the alterations; and
 - b) Between January 2020 and September 2020, the Respondent, or his assistant for whom he was responsible, photocopied signature pages from account forms that had been signed by clients and re-used the signature pages to complete 6 additional forms in respect of 3 clients.

III. PROPOSED SETTLEMENT

4. Staff and the Respondent agreed to the following terms of settlement that require that the Respondent:

- a) pay a fine of \$19,000 in certified funds upon acceptance of the Settlement Agreement by the Hearing Panel, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) pay costs of \$5000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1; and
- c) In the future comply with MFDA Rule 2.1.1.

IV. AGREED FACTS

Registration

5. Since approximately February 27, 1997, the Respondent has been registered in the securities industry in Ontario as a dealing representative with Quadrus Investment Services Ltd. (the “Member”), a Member of the MFDA. He is an Approved Person.

Altered Account Forms

6. 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 change was approved.

7. Between February 2019 and April 2020, the Respondent, or his assistant for whom he was responsible, altered and used to process transactions, 3 account forms in respect of 4 clients, by altering information on the account forms without having the clients initial the alterations.

8. The altered account forms consisted of one Transfer Authorization for Registered Investments Form, one Application for a Savings or Income Plan Form and one Pre-Authorized Chequing Form. The Respondent altered a deposit amount, a client policy account number and a plan account number.

Re-Used Client Signatures

9. At all material times, the Member’s policies and procedures prohibited Approved Persons from photocopying a document to re-use a client’s signature.

10. Between January 2020 and September 2020, the Respondent, or his assistant for whom he was responsible, photocopied signature pages from account forms that had been signed by clients and re-used the signature pages to complete 6 additional forms in respect of 3 clients and submitted the forms to the Member for processing.

11. The forms consisted of 2 Transfer Authorization for Registered Investments Forms, 2 Know Your Client Forms and 2 Non-Financial Change Forms.

The Member's Investigation

12. During a branch review in September 2020, the Member discovered some of the subject deficient account forms. The Member subsequently commenced an investigation into the Respondent's conduct and identified the remaining subject account forms.

13. As part of its investigation, in October and November 2020, the Member sent audit letters along with a portfolio summary to clients whose accounts the Respondent serviced to determine that the information was accurate and the underlying transactions were authorized. No clients contacted the Member with any concerns.

14. On October 6, 2020, the Member issued a disciplinary letter and placed the Respondent on close supervision until April 7, 2021.

15. The Member also imposed a \$400 monthly supervision fee on the Respondent, who paid a total of \$2,000 in fees to the Member during the close supervision period.

V. CONSIDERATIONS

Role of the Hearing Panel

16. Section 24.4.3 of MFDA By-law No. 1 provides that hearing panels may only accept or reject a settlement agreement.

17. It is generally accepted that a hearing panel will not lightly interfere with a settlement agreement reached between Staff and a respondent and will not reject it unless it views the penalty as clearly falling outside a reasonable range of appropriateness. See, for example, *Sterling Mutuals Inc. (Re)*, LNCMFDA 16 at para. 37.

18. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily: whether it was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and previous MFDA cases; whether it would serve as a specific and general deterrent; and whether it was aligned with the MFDA's objectives to protect investors and strengthen public confidence in the mutual fund industry.

Misconduct

19. MFDA Rule 2.1.1 requires, among other things, that Approved Persons deal fairly, honestly and in good faith with their clients, observe high standards of ethics and conduct in the transaction of business and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

20. We found that, as admitted by the Respondent, he contravened MFDA Rule 2.1.1 when he, or his assistant for whom he was responsible, altered information on account forms without having the clients initial the changes and used those forms; and photocopied signatures pages from previously signed account forms and re-used them on additional forms.

21. The nature of the Respondent's misconduct is serious as it can, among other things, negatively impact the integrity of account documents, destroy the audit trail, impede the Member's ability to supervise accounts and respond to client complaints and potentially allow for misuse such as unauthorized trading and misappropriation.

Sanction

22. In our opinion, the nature of the misconduct described above warranted a meaningful fine.

23. In considering the proposed sanction, we regarded the following as aggravating factors:

- a) the Respondent had been registered in the securities industry for approximately 22 years before the misconduct commenced and should have been aware of the rules; and
- b) the misconduct occurred after the MFDA had issued its Bulletin #0661-E, dated October 2, 2015, in which the MFDA warned the industry against, among other things, altering account forms and photocopying and re-using client signatures, and advised that it would be seeking increased penalties in future such cases.

24. In reaching our decision on the sanction, we considered a number of mitigating factors, including that:

- a) there was no evidence that the Respondent received any financial benefit from the misconduct beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner;
- b) there was no evidence of client loss, complaints or lack of authorization;
- c) the Respondent had not previously been the subject of MFDA disciplinary proceedings;
- d) the Member took action to address the misconduct by issuing a disciplinary letter and placing the Respondent under close supervision, for which it charged the Respondent a total of \$2,000; and
- e) by entering into the Settlement Agreement, the Respondent accepted responsibility for his misconduct and saved the MFDA the time, resources and expenses associated with conducting a full hearing.

25. In our view, the fine of \$19,000 imposed on the Respondent should deter him from engaging in similar conduct in the future.

26. This kind of misconduct by Approved Persons in some firms continues to occur, notwithstanding MFDA Notices and sanctions imposed in previous cases. The sanction in this case should serve the goal of general deterrence by sending a message to others in the mutual fund industry that the subject conduct will not be tolerated and that those who

engage in similar conduct will face meaningful penalties. If that does not prove to be the case in the future, the MFDA may need to consider other strategies in order to curtail similar misconduct in the mutual fund industry.

27. The proposed penalty was within a reasonable range of appropriateness, having regard to the decisions in previous cases involving a breach of MFDA Rule 2.1.1 that Staff presented to the Hearing Panel and are summarized below.

Case:	Contraventions:	Penalty:	Other Factors:
<p><i>Rizovska-Spasik (Re)</i>, [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202236, Reasons for Decision dated November 23, 2022</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Between August 6, 2020 and November 9, 2020, cut and pasted client signatures from copies of account forms previously signed by clients onto 4 new client forms, and submitted the forms to the Member for processing. 	<p>Settlement</p> <ul style="list-style-type: none"> \$13,000 fine \$2,500 costs 	<ul style="list-style-type: none"> The Respondent was terminated.
<p><i>Roberts (Re)</i>, [2022] Hearing Panel of the Pacific Regional Council, MFDA File No. 202225, Reasons for Decision dated December 15, 2022</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Between October 20, 2020 and October 22, 2020, signed a client's signature on 4 account forms and submitted the forms to the Member for processing. 	<p>Settlement</p> <ul style="list-style-type: none"> \$10,000 fine \$2,500 costs 	<ul style="list-style-type: none"> The Respondent was terminated. He was 64 years old, retired, and had no intention of working in the financial services industry in the future. He stated that during the material time his spouse had a serious illness. As a result of stress, he exercised poor judgment when he signed the client's signature on the account forms.

Case:	Contraventions:	Penalty:	Other Factors:
<p><i>Ajin (Re)</i>, [2022] Hearing Panel of the Atlantic Regional Council, MFDA File No. 202178 [Reasons for Decision Not Yet Released – See Order and News Release]</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Between August 2019 and November 2019, cut and pasted client signatures from copies of account forms previously signed by 3 clients onto 4 new account forms and submitted them to the Member for processing. 	<p>Settlement</p> <ul style="list-style-type: none"> \$12,500 fine \$2,500 costs 	<ul style="list-style-type: none"> The Respondent was terminated.
<p><i>Yu (Re)</i>, [2022] Hearing Panel of the Prairie Regional Council, MFDA File No. 202170, Reasons for Decision dated May 12, 2022</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Copied and pasted the signature of a client from an account form previously signed by the client onto a new account form; and Signed a client's initials on an account form, and submitted the forms to the Member for processing. 	<p>Settlement</p> <ul style="list-style-type: none"> \$9,500 fine \$2,500 costs 	
<p><i>Armstrong (Re)</i>, [2021] Hearing Panel of the Pacific Regional Council, MFDA File No. 202161, Reasons for Decision dated November 30, 2021</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> Between March 2017 and January 2019, photocopied signature pages from account forms previously been signed by clients and re-used the signature pages to complete 5 new account forms in respect of 4 clients; and On June 15, 2018, altered and used to process a transaction 1 account form in respect of 1 client by altering information on the account form without having the client initial the alteration. 	<p>Settlement</p> <ul style="list-style-type: none"> \$12,000 fine \$2,500 costs 	<ul style="list-style-type: none"> The Panel stated that the penalty was at the “very low end” of the appropriate range.

28. The sanctions imposed in those cases were lower than that proposed in the current case. However, we note that those cases generally involved fewer deficient forms and in three of the cases the Respondents had also been terminated from their positions. In addition, the costs awarded in the precedent cases were lower than the costs proposed in the case at hand. Staff indicated to the Hearing Panel that the increased amount was reflective of their time required in this case.

VI. CONCLUSION

29. We concluded that the proposed sanction was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's conduct and previous MFDA cases. It should serve as a specific and general deterrent. We were also of the view that it was aligned with the MFDA's regulatory objectives. Accordingly, we decided to accept the Settlement Agreement.

DATED this 29th day of June, 2023.

"Joan Smart"

Joan Smart
Chair

"Eugene Park"

Eugene Park
Industry Representative

"Colleen Waring"

Colleen Waring
Industry Representative

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