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: Rakesh Garg

Heard: May 4, 2022 by electronic hearing in Toronto, Ontario
Decision: May 4, 2022
Reasons for Decision: June 13, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart	Chair
Jeff Page	Industry Representative
Patrick Galarneau	Industry Representative

Appearances:

Michael A. M. Mantle	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
	)	
	)	
Rafal Szymanski	)	Counsel for Respondent
	)	
	)	
Rakesh Garg	)	Respondent
	)	
	)	

I. INTRODUCTION

1. By Notice of Hearing, dated December 10, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced proceedings against Rakesh Garg (the "Respondent"). As a result of a settlement agreement, dated March 14, 2022, entered into by staff of the MFDA ("Staff") and the Respondent (the "Settlement Agreement"), the MFDA announced on March 31, 2022, that a settlement hearing would take place electronically by videoconference before a Hearing Panel on May 4, 2022.

2. At the Settlement Hearing on May 4, 2022, the Hearing Panel, after hearing submissions of counsel for the parties 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 October 2017 and January 2020, he obtained, possessed and, in some instances, used to process transactions, 17 pre-signed account forms in respect of 15 clients;

b) between August 2017 and December 2017, he altered and used to process transactions, 2 account forms in respect of 2 clients by altering information on the account forms without having the clients initial the alterations; and

c) between February 2017 and November 2019 he photocopied signature pages from account forms that had been previously signed by clients and reused the signature pages to complete 16 additional forms in respect of 8 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 $25,000 upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

b) pay costs of $2,500 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 August 1999, the Respondent has been registered in the securities industry, and since approximately July 2004, has been registered in Ontario as a dealing representative with Worldsource Financial Management Inc. (the "Member"), a Member of the MFDA. He was an Approved Person.

Pre-signed Forms

6. Between October 2017 and January 2020, the Respondent obtained, possessed, and in some instances used to process transactions, 17 pre-signed account forms in respect of 15 clients.

7. The pre-signed account forms included: 10 Redemption Forms, 5 Registered Educational Savings Plan ("RESP") Educational Assistance Payment Forms and 2 Purchase Forms.

Altered Account Forms

8. Between August 2017 and December 2017, the Respondent altered and used to process transactions, 2 account forms in respect of 2 clients, by altering information on the account forms without having the clients initial the alterations.

9. The altered account forms consisted of 1 Redemption Form and 1 RESP Educational Assistance Payment Form.

Reused Client Signatures

10. Between February 2017 and November 2019 the Respondent photocopied signature pages from account forms that had been previously signed by clients and reused the signature pages to complete 16 additional forms in respect of 8 clients.

11. The account forms consisted of 9 RESP Educational Assistance Payment Forms, 4 Redemption Forms and 3 Purchase Forms.

The Member's Investigation

12. On March 11, 2020, the Member conducted an audit of the Respondent's branch, during which it discovered some of the subject forms.

13. On March 17, 2020, the Member issued a cautionary letter to the Respondent regarding his use of pre-signed account forms, altered account forms and reused client signatures.

14. The Member conducted an investigation to determine whether the transactions by the Respondent were authorized by the clients and whether the Know Your Client ("KYC") information the Member had on file was accurate. The investigation included conducting a full review of the Respondent's client files and writing affected clients to review with them their transaction history and KYC information. No clients responded to the Member with any concerns.

15. From March 17, 2020 to March 31, 2021, the Member subjected the Respondent to close supervision and deducted $1,117.55 from the Respondent's commission for the cost of conducting the close supervision.

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: obtained, possessed, and in some instances used, pre-signed account forms; 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 reused them to complete 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. Of particular concern to us was the photocopying and reusing of client signatures, which is a form of signature falsification.

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 over 17 years before the subject 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, using pre-signed account forms, altering account forms without having clients initial the changes and photocopying and reusing 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 relating to the Respondent's misconduct;

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 cautionary letter, imposing a period of strict supervision and charging the Respondent $1,117.55 in relation thereto; 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 $25,000 imposed on the Respondent should deter him from engaging in similar conduct in the future.

26. This kind of misconduct by Approved Persons has occurred too frequently in the past. 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 imposing even more significant sanctions 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 decisions provided to us made by MFDA hearing panels arising out of settlements in similar circumstances, particularly the case of *Nguyen (Re),* [2022] Hearing Panel of the Prairie Regional Council, MFDA File No. 202126, Panel Decision dated February 11, 2022. In that case involving pre-signed forms and re-use of client signatures, a fine of $25,000 and costs of $2,500 were imposed.

VI. CONCLUSION

28. 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 13th day of June, 2022.

"Joan Smart"

Joan Smart
Chair

"Jeff Page"

Jeff Page
Industry Representative

"Patrick Galarneau"

Patrick Galarneau
Industry Representative

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