



**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: Lawrence Edward Geisel**

Heard: March 3, 2020 in Saskatoon, Saskatchewan  
Decision: March 3, 2020  
Reasons for Decision: April 6, 2020

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Sherri Walsh  
Adam Dudley  
Greg Wiebe

Chair  
Industry Representative  
Industry Representative

Appearances:

Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Megan Lorenz	)	Counsel for the Respondent, in person
	)	
	)	
Lawrence Edward Geisel	)	Respondent, in person
	)	
	)	

## **I. BACKGROUND**

1. On December 17, 2019, Lawrence Edward Geisel ("Respondent") entered into a settlement agreement with Staff of the Mutual Fund Dealers Association of Canada ("MFDA") (the "Settlement Agreement") pursuant to which the Respondent agreed to be disciplined under sections 20 and 24.4.1 of By-law No. 1 of the MFDA.
2. On December 18, 2019, the MFDA issued a Notice of Settlement Hearing giving notice that a hearing was to be held before a Hearing Panel of the Prairie Regional Council (the "Panel") of the MFDA to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, the Panel should accept the Settlement Agreement.
3. The settlement hearing took place on March 3, 2020.
4. The Respondent attended the hearing in person and was represented by counsel.
5. At the conclusion of the hearing, the Panel accepted the Settlement Agreement and issued an Order to that effect. The Reasons for the Panel's acceptance are set out below.

## **II. CONTRAVENTIONS**

6. In the Settlement Agreement, the Respondent admitted to the following violations of the By-laws, Rules or Policies of the MFDA:
  - a) Between September 2017 and May 2018, the Respondent obtained, possessed and used to process transactions, 44 pre-signed accounts forms in respect of 14 clients, contrary to MFDA Rule 2.1.1.

## **III. TERMS OF SETTLEMENT**

7. Staff and the Respondent agreed on the following terms of settlement:
  - a) the Respondent shall pay a fine in the amount of \$11,500 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 pay costs in the amount of \$2,500.00 in certified funds upon acceptance of the Settlement Agreement pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- d) the Respondent will attend the Settlement Hearing in person.

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

8. The agreed facts are set out at paragraphs 7 through 20 of the Settlement Agreement as follows:

##### **Registration History**

7. Commencing January 1994, the Respondent has been registered as a mutual fund salesperson (now known as a dealing representative).

8. Since August 2017, the Respondent has been registered in Alberta and Saskatchewan as a dealing representative with Investia Financial Services Inc. (the “Member”), a Member of the MFDA.

9. At all material times, the Respondent carried on business in the Saskatoon, Saskatchewan area.

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

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

11. Between September 2017 and May 2018, the Respondent obtained, possessed, and used to process transactions, 44 pre-signed account forms in respect of 14 clients.

12. The pre-signed account forms consisted of Order Instruction, Automatic Conversion of Free Units, Know-Your-Client and Fidelity Transfer Authorization forms.

##### **Member’s Investigation**

13. In July 2018, MFDA Staff identified one of the pre-signed forms that are the subject of this Settlement Agreement during an onsite branch review. MFDA Staff subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining pre-signed forms that are the subject of this Settlement Agreement.

14. The Member commenced an investigation into the Respondent’s conduct. In September 2018, the Member sent audit letters to all of the clients whose accounts the Respondent serviced, provided them with their Portfolio Summary, and asked them to contact the Member if they identify any inconsistencies in their accounts. The clients did not report any concerns.

15. On September 14, 2018, the Member placed the Respondent under strict supervision and imposed an administrative fine of \$827.

16. On December 11, 2018, the Member issued a warning letter to the Respondent for possessing and using pre-signed account forms.

## **Additional Factors**

17. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.
18. 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.
19. There is no evidence of any client loss or that the transactions were unauthorized.
20. 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

## **V. ANALYSIS**

### **Role of the Panel**

9. 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*

10. The role of a Hearing Panel at a Settlement Hearing is fundamentally different from the role the Panel performs at a Contested Hearing.
11. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

...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." [1999] I.D.A.C.D. No. 17 at page 12

*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

12. Hearing Panels have acknowledged that settlement agreements which have been worked out by the parties should be respected, because Panels do not know what led to the settlement, or what was given up by the parties during the course of their negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement, as was the case in this matter, 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 and 23

13. 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

14. 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**

15. 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

16. 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

17. 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

18. In determining the appropriateness of a proposed penalty, Hearing Panels 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

19. 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**

20. On November 15, 2018, the MFDA issued Sanction Guidelines to assist 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.

21. 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*

22. 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 – Nature of the Misconduct**

23. The Respondent's misconduct in this matter was serious. He has admitted that he obtained, possessed, and used to process transactions, 44 pre-signed account forms, contrary to MFDA Rule 2.1.1.

24. 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 and 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.

25. 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

26. Although the terms “business, conduct or practice which is unbecoming”, “good faith”; and “high standards of ethics” are not defined in the MFDA 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

27. 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)

28. Since October 31, 2007, the MFDA has made clear to Approved Persons in both its 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

29. 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*

30. 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

31. 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

*Wellman (Re)*, MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015 at para.10

### **Post-Bulletin Misconduct**

32. All of the forms which are the subject matter of these proceedings were processed after the MFDA had issued a further Bulletin on this subject - Bulletin #0661-E on October 2, 2015., in which Staff advised that it would be seeking enhanced penalties at MFDA discipline proceedings for conduct that occurred after the publication of that Bulletin. MFDA Panels have considered conduct which has occurred after the publication of that Bulletin to be an aggravating factor when determining the appropriateness of a penalty.

*Techer*, MFDA File No. 201661, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016 at para.44

*Ackerman*, MFDA File No. 201734, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated September 13, 2017 at para.29

### **The Respondent's Experience in the Securities Industry**

33. The Respondent has been registered as a mutual fund salesperson (now known as a Dealing Representative) since January 1994.

34. Approved Persons are expected to be familiar with the requirements imposed on them by the MFDA and by 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

35. The Respondent ought to have been aware, therefore, of the prohibition against using pre-signed account forms in compliance with the requirements of both the MFDA and the Member under whom he was registered.

### **The Respondent's Past Conduct**

36. The Respondent has had a long career and has not previously been disciplined by the MFDA.

### **The Respondent's Recognition of the Seriousness of his Misconduct**

37. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and has saved the MFDA the necessity of incurring the additional time and expense associated with conducting a contested hearing of the allegations.

### **Client Harm; Benefits Received by the Respondent**

38. There is no evidence of client harm nor did any client complain.

39. There is also no evidence that the Respondent received any financial benefit from engaging in the misconduct described in the Settlement Agreement.

### **Deterrence**

40. 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 the appropriateness of a penalty.

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

*Tonnies*, *supra* at para. 47

41. 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 that the misconduct is not repeated by others in the industry. As the Supreme Court of Canada stated:

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

42. In this case, the Panel is satisfied that a fine of \$11,500 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

43. 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:

CASE	FACTS	OUTCOME
<i>McIntyre</i> , MFDA File No. 201891, Hearing Panel of the Pacific Regional Council, Order dated September 27, 2018	<ul style="list-style-type: none"><li>• The Respondent obtained, possessed, and used to process transactions, 35 pre-signed account forms</li><li>• Post-bulletin conduct</li></ul>	<ul style="list-style-type: none"><li>• Fine of \$11,000</li><li>• Costs of \$2,500</li></ul>
<i>Dick</i> , MFDA File No. 201818, Hearing Panel of the Central Regional Council, Order dated March 29, 2018	<ul style="list-style-type: none"><li>• The Respondent obtained, possessed, and used to process transactions, 44 pre-signed account forms</li><li>• The Respondent altered and used to process transactions, 7 account forms</li><li>• Post-bulletin conduct</li></ul>	<ul style="list-style-type: none"><li>• Fine of \$15,000</li><li>• Costs of \$2,500</li></ul>
<i>Fredrickson</i> , MFDA File No. 201836, Hearing Panel of the Prairie Regional Council, Order dated March 18, 2019	<ul style="list-style-type: none"><li>• The Respondent obtained, possessed, and used to process transactions, 44 pre-signed account forms</li></ul>	<ul style="list-style-type: none"><li>• Fine of \$10,000</li><li>• Costs of \$2,500</li></ul>

## Sanctions Imposed by the Member

44. In determining the appropriateness of the proposed penalty, the Panel also considered the fact that on September 14, 2018, the Member placed the Respondent under strict supervision, imposed an administrative fine of \$827 and on December 11, 2018, issued a warning letter to the Respondent – all as the result of the misconduct which is the subject of the Settlement Agreement of his having possessed and used pre-signed account forms.

## VI. CONCLUSION

45. Having reviewed the Settlement Agreement and having heard oral submissions from both Staff and counsel for the Respondent, the Panel is satisfied that the penalty which is set out in the Settlement Agreement falls within a reasonable range of appropriateness having regard to the nature and extent of the Respondent's misconduct and all of the circumstances.

46. The Panel believes the proposed penalty will deter the Respondent and other Approved Persons from engaging in the type of conduct that is the subject of these proceedings, will advance both the public interest and the MFDA's objective to enhance investor protection and will ensure high standards of conduct in the mutual fund industry.

47. The Panel, therefore, accepts the Settlement Agreement.

**DATED** this 6<sup>th</sup> day of April, 2020.

“Sherri Walsh”

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Sherri Walsh  
Chair

“Adam Dudley”

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Adam Dudley  
Industry Representative

“Greg Wiebe”

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Greg Wiebe  
Industry Representative