Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1
OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Paul Singh Gill

Heard: January 11, 2018 in Vancouver, British Columbia
Decision: January 11, 2018
Reasons for Decision: March 22, 2018

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Joseph A. Bernardo	Chair
Kathleen Jost	Industry Representative
Robert Sokugawa	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
Paul Singh Gill	)	Respondent, in Person

1. On July 19, 2017, the Mutual Fund Dealer's Association of Canada (MFDA) issued a Notice of Hearing alleging that Paul Singh Gill, the Respondent, had violated the rules of the MFDA by falsifying the signatures of three clients on certain documents and then misrepresenting them as genuine.

2. The disciplinary hearing took place on January 11, 2018.

Evidence

3. At the hearing, the MFDA and Respondent tendered an agreed statement of facts executed by the parties on September 12, 2017, supplemented with oral clarifications by mutual consent.

4. In summary, the MFDA and Respondent agreed that:

a) The Respondent was registered as a mutual fund salesperson from September 2009 to January 2016. His last employer in the industry was TD Investment Services Inc. (TD).
b) The relevant conduct took place in Surrey, British Columbia.
c) On Friday, December 18, 2015, the Respondent's branch manager asked him to arrange for three clients (Clients) to attend the branch in order to update their client account information.
d) The update was requested in anticipation of a branch audit scheduled for the following Monday, on December 21, 2015.
e) The Respondent already had a full day of meetings scheduled for December 19, 2015. Faced with a severe time constraint, he panicked.
f) The Respondent did not meet the Clients.
g) Instead, on December 19, 2015 he signed their names on two know your client forms (KYC forms) and one account form, all without their knowledge and consent.
h) He then falsely represented to his branch manager that he had contacted the Clients and obtained their signatures to updated forms.

i) On December 21, 2015, the branch manager became aware that one of the KYC forms had been signed and submitted in respect of an incorrect Client account. Upon speaking with this Client, the branch manager learned that neither he nor his spouse, who was also a Client, had met with the Respondent to update their account information.

j) When confronted, the Respondent admitted to the branch manager that he had falsified the Client signatures.

k) TD's policies and procedures prohibited approved persons from falsifying client signatures.

l) The Respondent is no longer registered in the securities industry in any capacity.

5. The factual representations jointly tendered into the record by the parties were internally consistent with each other, and nothing was said by either party during the hearing that can be interpreted as contradicting them.

Liability decision

6. The Notice of Hearing alleges that on December 19, 2015, the Respondent:

a) signed the names of the Clients on two KYC forms and one account form, contrary to MFDA Rule 2.1.1.

b) failed to use due diligence to learn essential client facts when he completed two KYC forms without having met or discussed the information in them with the relevant Clients, contrary to MFDA Rules 2.2.1 and 2.1.1.

c) falsely represented to his branch manager that he had contacted the Clients and obtained their signatures, contrary to MFDA Rule 2.1.1.

7. The Respondent was an Approved Person, by virtue of his registration as a mutual fund salesperson (now called a Dealing Representative).

8. Approved Persons are required by MFDA Rule 2.1.1 to observe high ethical standards and to refrain from business conduct unbecoming or detrimental to the public interest.

9. This general ethical obligation overlaps with a more specific obligation under MFDA Rule 2.2.1, which, among other things, requires Approved Persons to be diligent in learning about a client's risk tolerance and investment objectives, facts essential to ensuring the client receives recommendations suitable for them.

10. Approved Persons are also subject to MFDA Rules 1.1.2 and 2.5.1, which obligate them to follow the supervisory policies and procedures of the Member firms that employ them.

11. The Respondent's falsification of Client signatures on the two KYC forms and one account form was necessarily unethical, because it violated his employer's explicit internal policies and procedures.

12. Moreover, as the MFDA has repeatedly emphasized over the years, the falsification of client signatures is inherently unethical and not acceptable under any circumstances.

> *MFDA Notice #MSN-0066*, October 31, 2007 (updated March 4, 2013).
> *MFDA Notice #MSN-0661-E*, October 2, 2015.

13. It follows that misleading the branch manager about the falsifications was also unethical.

14. The Respondent's falsification of the Client signatures on the KYC forms, in addition to being unethical, represented a failure to diligently learn essential client facts as required by MFDA Rule 2.2.1.

15. The hearing panel finds that the allegations in the Notice of Hearing, which the Respondent in any event admitted in the agreed statement of facts, are established on the evidence.

Penalty

16. The agreed statement of facts sets out the sanctions proposed by the MFDA and the Respondent's written acquiescence to them, as follows:

a) one year prohibition from conducting securities related business in any capacity while employed or associated with any MFDA Member;
b) $5,000 fine; and
c) $2,500 in costs.

17. In argument, the MFDA submitted that although the hearing followed the form of a contested proceeding, it should be regarded as analogous to a settlement hearing.

18. It is generally accepted that when considering a settlement, a hearing panel ought not to reject the proposed outcome unless it clearly falls outside the reasonable range of appropriateness. The public's interest in prompt and efficient dispositions is the policy rationale for this review standard.

19. We were encouraged to consider the same policy rationale as applicable to the agreement respecting evidence, liability, and penalty reached by parties in the present case.

20. The settlement review standard is derived from the fairly austere language of MFDA Rule 24.4.3, which confers on hearing panels a simple jurisdiction to either accept or reject a settlement. By contrast, the power of a hearing panel to impose penalties on an Approved Person at the conclusion of a hearing is derived from the more wide-ranging discretion conferred by MFDA Rule 24.1.1.

21. As a practical matter, we agree with the common sense proposition that a measure of restraint is warranted when the parties to a contested hearing are in agreement regarding all of its material particulars.

22. Nonetheless, when operating within the framework of a contested hearing a hearing panel remains duty bound to weigh the evidence before it draws any conclusions. Should the evidence be sufficient to establish liability, the panel likewise becomes obligated to exercise the discretion conferred on it by Rule 24.1.1. That is to say, whether or not the parties have agreed on a penalty, the panel must still deliberate on whether it is a fit one in light of all the evidence.

23. The form of administrative proceedings is very much part of their substance. Within the settlement framework, the role of a hearing panel is to determine whether a proposed outcome falls within a reasonable range of appropriateness; outside of that framework, however, a panel's role is to determine the outcome.

24. The MFDA reviewed a number of MFDA settlement decisions in support of the sanction submission made jointly with the Respondent. The decisions all concerned relatively isolated episodes of client signature falsifications analogous to the Respondent's lapse. The sanctions proposed by the MFDA and the Respondent are consistent with those approved in the previous cases.

Johnny Wu (Re), MFDA File #201793
Brent Barnai (Re), MFDA File #201325
Pang (Re), MFDA File #201563
Jeremy Martin (Re), MFDA File #201602

25. In assessing the appropriateness of the proposed penalties, the hearing panel considered the following factors.

a) The falsification of client signatures is by definition a serious breach of the MFDA's ethical standards, as well as a continuing industry problem.
b) The Respondent had been registered since 2009 and was therefore fully aware there are no circumstances in the mutual fund industry that justify the falsification of signatures.
c) There is no evidence the Respondent obtained any financial benefit from his actions or of any client harm.

d) The Respondent has no prior disciplinary history with the MFDA. By admitting his culpability, he demonstrated that he has accepted responsibility for his actions.

e) The proposed fine of $5,000 is the minimum recommended by the MFDA's Penalty Guidelines.

26. Taking into consideration the isolated nature of the breaches, the Respondent's history and co-operation, the hearing panel is satisfied that the penalties proposed by the parties represent a proportionate deterrent response to the Respondent's misconduct and ordered accordingly.

DATED this 22nd day of March, 2018.

"Joseph A. Bernardo"

Joseph A. Bernardo
Chair

"Kathleen Jost"

Kathleen Jost
Industry Representative

"Robert Sokugawa"

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Industry Representative

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