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: Shahin Golestani

Heard: June 11, 2018 in Vancouver, British Columbia
Decision: June 11, 2018
Reasons for Decision: July 4, 2018

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Ian H. Pitfield	Chair
Susan Monk	Industry Representative
Richard Sydenham	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
Andrew Spence	)	Counsel for the Respondent
Shahin Golestani	)	Respondent, in person

1. On June 11, 2018, after hearing representations from counsel, we approved a Settlement Agreement dated April 25,2018 (“Settlement Agreement”) between the Mutual Fund Dealers Association of Canada (“MFDA”) and Shahin Golestani (“Respondent”).

2. The Order provides that the Respondent shall pay a fine of $5,000 and costs of $2,500. In addition, the Respondent is prohibited from conducting a securities-related business in any capacity while in the employ of or associated with any MFDA Member for a period of two years commencing June 11, 2018.

Agreed Facts

3. The material facts are set forth in paras. 6 through 21 of the Settlement Agreement:

> 6. From September 28, 2009 to June 5, 2012, the Respondent was registered in British Columbia as a mutual fund salesperson (now known as a dealing representative) with Sun Life Investment Services (Canada) Inc., a Member of the MFDA.
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> 7. From September 29, 2014 to Aptil27, 2016, the Respondent was registered in British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Quebec, Ontario, and Saskatchewan as a mutual fund salesperson with HSBC lnvestment Funds (Canada) Inc. (“HSBC”), a Member of the MFDA.
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> 8. HSBC terminated the Respondent's employment on April 27, 2016 as a result of the conduct described below.
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> 9. The Respondent is not currently registered in the securities industry.
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> 10. At all material times, the Respondent conducted business from an HSBC call center located in the Burnaby, British Columbia area (the "Call Centre").
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> **Background**
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> 11. The Call Centre permitted clients to contact HSBC by telephone and request mutual fund transactions in their accounts. The Respondent's role at the Call Centre included answering telephone calls from clients and processing mutual fund transactions requested by them.

12. At all material times, HSBC's policies and procedures required its Approved Persons to use due diligence to learn and accurately record or update client Know-Your-Client ("KYC") information prior to processing a transaction in the client's investment account.

13. Prior to proceeding with a transaction requested by a client, the Respondent was required by HSBC to ask the client a series of questions to determine, verify and/or update the client's risk tolerance KYC information (the "KYC Questions") and record the KYC information provided by the client on HSBC's back office system.

14. The Respondent was also required to obtain or verify the KYC information of a client caller before accepting instructions concerning transactions to be processed in the client's accounts.

15. HSBC records the telephone conversation conducted at the Call Centre, and maintains the recordings as a record of the discussions that occurred and the client information and instructions communicated during the calls.

16. The Respondent received a salary of $40,000 per annum from HSBC without bonuses or commissions for transactions.

17. The Respondent has not been employed in the securities industry since his termination from HSBC on April 27, 2016.

The Respondent Failed To Use Due Diligence To Learn And Accurately Record Client Risk Tolerance KYC Information

18. Between September 29, 2014 and April 27, 2016, the Respondent prompted, coached or otherwise influenced at least 2l clients who contacted the Call Centre to select certain responses to the KYC Questions, regarding the client's risk tolerance, in order to make the clients' existing mutual fund investments, appear to be consistent with the clients' risk tolerance in their KYC profile and suitable.

19. At all material times, the Respondent failed to learn and record accurately 2l clients' risk tolerance KYC information before assessing the suitability of the clients' existing investment holdings, or accepting investment instructions from the clients.

20. In some instances, the Respondent's conduct caused the client's risk tolerance to be overstated.

21. In some instances where the client provided responses to the KYC Questions which indicated the client's existing investments holdings were not consistent with the client's actual KYC profile, the Respondent instructed or coached the client to select a different response to certain KYC Questions to alter the KYC profile. The

> Respondent engaged in this conduct so that the client's existing investment holdings would appear to be suitable for the client.
>
> [sic]

4. The Respondent has not previously been the subject of any MFDA disciplinary proceeding.

5. There is no evidence that any client suffered harm through use of the forms, or that the Respondent benefitted beyond the receipt of commissions in the ordinary course.

Analysis and Decision

6. By accepting the Settlement Agreement, the Respondent admits that his conduct contravened MFDA Rule 2.1.1 requiring an Approved Person to deal fairly, honestly, and in good faith with clients; to observe high standards of ethics and conduct in the transaction of business; and to refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. In addition, MFDA Rule 2.2.1 requires Approved Persons to use due diligence to learn the essential facts relative to each client and to each order or account accepted.

7. Counsel for the MFDA sums up the contravention as follows:

> The Respondent suggested responses to clients in order that they achieve a specific risk tolerance rather than doing his due diligence in asking questions to determine what the client's actual risk tolerance was. The Respondent failed in his obligation to learn from the client and accurately record KYC information that assists the Member in assessing the suitability of a transaction and assists the client in ensuring they are in the correct mutual fund for them in consideration of that client's KYC information.

8. The parties agree that when instructions received at the Call Centre did not conform to the client's risk tolerance, the transaction request should have been refused and the client should have been referred to an investment advisor to discuss risk tolerance, thereby ensuring that investments of the kind the client was requesting through the Call Centre were appropriate.

9. The accepted principle is that a hearing panel will not reject a settlement agreement unless the proposed penalty falls outside the reasonable range of appropriateness. As stated by counsel, settlements advance the MFDA's regulatory objective of protecting the public by proscribing activities that are harmful to the public while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent: see *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484, at paras. 31 and 49.

10. Counsel for the MFDA has been unable to identify other cases involving conduct of the kind here in question, namely communication with a Call Centre, coaching to obtain responses from a client, and a failure to use due diligence to learn and accurately record KYC information. However, the cases cited by counsel are helpful, concerned as they are with situations in which dealing representatives failed to use due diligence in assessing risk tolerance thereby contravening the accepted KYC standards. They differ in that in the cited cases, no Call Centre was involved and the added element of coaching or prompting is lacking.

11. In *Re: Avtar Singh Badasha*, MFDA File No. 201424, Reasons for Decision June 9, 2015, Pacific Regional Council, a dealing representative, who was also a branch manager, opened accounts for 16 individuals with whom he did not meet to learn the essential facts relative to each of them. In addition, he used pre-signed forms for seven clients, changed dates on two client forms, and sent signature pages only on required documentation to six clients. The settlement agreement in that case provided for a fine of $5,000, the payment of costs in the amount of $2,500, and a prohibition from conducting a securities-related business while in the employ of a MFDA Member for a period of two years.

12. In *Re: Lawrence Philip Fike*, MFDA File No. 201702, Reasons for Decision December 18, 2017, Central Regional Council, the dealing representative failed to accurately record the essential KYC factors for five clients before making investment recommendations; failed to use due diligence to ensure that investment recommendations were suitable for five clients having regard for the clients' KYC information and the extent of their investments in precious metal sector funds; and failed to present a balanced explanation of the risks and benefits of investing in precious metals

sector funds. Fike was permanently prohibited from conducting securities-related business while in the employ of a MFDA Member, fined $10,000, and ordered to pay costs of $5,000.

13. In *Re: James Edward Curtis*, MFDA File No. 201687, Reasons for Decision December 7, 2017, Central Regional Council, the dealing representative admitted that he failed to follow a number of compliance directives requiring him to reassess the suitability of his recommendations to clients that they hold 100% of their portfolio in a single precious metal sector fund; and arranged for 75 clients to complete updated KYC forms that increased their risk tolerance in order to match his recommendation that they hold 100% of their investments in a single precious metals sector fund. Curtis was permanently prohibited from conducting securities-related business in the employ of a MFDA Member.

14. While none of the cases is analogous to the case now before this Panel, they do point to the fact that conduct related to this misuse or abuse of KYC requirements is egregious and should be penalized accordingly.

15. The MFDA submits that a fine of $5,000, an order for the payment of costs in the amount of $2,500, and a two-year prohibition are appropriate, saying that the *Badasha* ruling is the best comparable.

16. The Panel agrees that the penalty imposed by the Settlement Agreement falls within the reasonable range of appropriateness having regard for the nature of the misconduct, the Respondent's experience in the mutual fund industry, the absence of past misconduct, the Respondent's acceptance of the Settlement Agreement, and other decisions in somewhat comparable circumstances. Moreover, while the fine is the minimum suggested by the penalty guidelines, the Member dismissed the Respondent in April 2016, he is not currently registered in the securities industry, and by virtue of the Settlement Agreement, he will be prohibited from employment with any MFDA Member for a further period of two years. In the circumstances, it is likely that his absence from the industry for a period of four years will not be conducive to renewed employment in any capacity with any Member of the MFDA.

17. For the foregoing reasons, the settlement agreement is approved.

DATED this 4th day of July, 2018.

"Ian H. Pitfield"

Ian H. Pitfield
Chair

"Susan Monk"

Susan Monk
Industry Representative

"Richard Sydenham"

Richard Sydenham
Industry Representative

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