



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: Nand Kishor Singh Gusain

Heard: March 28, 2019 in Toronto, Ontario

Decision: March 28, 2019

Reasons for Decision: May 17, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC
Brigitte J. Geisler
Guenther W. K. Kleberg

Chair
Industry Representative
Industry Representative

Appearances:

Jacklyn Neborak and
Paul Blasiak

) Enforcement Counsel for the Mutual Fund
) Dealers Association of Canada

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)

)

Nand Kishor Singh Gusain

) Respondent, not in attendance or represented by
) counsel

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Decision

1. There were two allegations against the Respondent set out in the Notice of Hearing. At a hearing on the merits in this matter on March 28, 2019, we found with regard to the allegations that the Respondent had engaged in the following misconduct:

- a) Between January 2010 and June 2015, the Respondent falsified, and in some instances used to process transactions, 16 account forms of 8 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.
- b) Between January 2016 and August 2016, the Respondent obtained, possessed, and in at least one instance, submitted to the Member for processing, 5 pre-signed account forms in respect of 4 clients, contrary to MFDA Rule 2.1.1.

Order

2. As a consequence of the misconduct we made an order as follows:

- i) The Respondent shall pay a total fine in the amount of \$17,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- ii) The Respondent shall pay costs attributable to conducting the investigation and hearing of this matter in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1; and
- iii) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

Procedure

3. The Notice of Hearing in this matter was issued on August 16, 2018.

4. Staff of the MFDA initially attempted to inform the Respondent of the proceeding against him by sending a copy of the Notice of Hearing to the Respondent's last known e-mail address.
5. The first appearance in this proceeding took place by teleconference before the Chair of a Hearing Panel on September 27, 2018 in accordance with s. 19.13(b) of MFDA By-law No. 1.
6. The Respondent did not attend at the first appearance.
7. The Hearing Panel ordered (the "first appearance order") that in accordance with the MFDA Rules of Procedure, Staff should serve the Respondent with the Notice of Hearing and its first appearance order by registered and ordinary mail or by courier with confirmation of delivery to the Respondent's last known address as recorded in the Corporation's records or in the records of any securities commission with which the Respondent is or was registered.
8. The Hearing Panel also ordered that the Respondent should serve and file his Reply to the Notice of Hearing on or before Wednesday, October 31, 2018, and that the hearing of this matter on its merits would take place in the hearing room at the offices of the MFDA, on Thursday, March 28, 2019, commencing at 1:00 p.m. (Eastern).
9. We were satisfied that Staff complied with the first appearance order.
10. In addition, Staff took many steps to leave the Notice of Hearing and the first appearance order for the Respondent at various addresses and communicated with others whom Staff had good reason to believe were related to the Respondent or possibly knew of his whereabouts.
11. The MFDA published releases about the time and substance of this hearing.
12. We ruled that Staff's actions in this matter with respect to service constituted good and effective service on the Respondent and that according to the MFDA rules of procedure the Notice of Hearing was duly served on the Respondent.
13. The Respondent did not file a Reply to the Notice of Hearing.
14. The Respondent did not appear at the hearing.

Case Proved

15. Section 20.4 of MFDA By-law No. 1 allows a Hearing Panel to accept the facts alleged in a Notice of Hearing as having been proven and to impose any of the penalties described in Section 24.1 of By-law No.1 where a respondent does not serve a reply or attend at a hearing.

16. We were prepared to rely on this provision alone.

17. However, Staff introduced in evidence the affidavit of Mr. Lambshead which constituted clear and conclusive evidence that the facts alleged against the Respondent in the Notice of hearing were true.

18. Accordingly, we accepted the facts alleged in the Notice of Hearing as having been proved and further determined that they had been proved on a balance of probabilities by the evidence in Mr. Lambshead's affidavit.

Facts alleged and proved

Registration History

19. The Respondent was registered in the mutual fund industry commencing in August 2003.

20. From October 2008 to May 2017, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investia Financial Services Inc. ("Investia"), a Member of the MFDA.

21. On May 17, 2017, Investia terminated the Respondent's registration.

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

23. At all material times, the Respondent conducted business in the Toronto, Ontario area.

Allegation #1 – Falsified Forms

24. Beginning in January 2012, Investia's policies and procedures required clients to initial any material changes made to client documents.

25. Between January 2010 and June 2015, the Respondent falsified, and in some instances used to process transactions, 16 account forms in respect of 8 clients by altering information on the account forms without having the client initial the alterations.

26. The falsified account forms consisted of new account application, order instruction, systematic instruction, and transfer authorization forms.

27. By virtue of the foregoing, the Respondent failed to observe a high standard of ethics and conduct in the transaction of business and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #2 – Pre-Signed Account Forms

28. At all material times, Investia's policies and procedures prohibited its Approved Persons from using pre-signed account forms.

29. Between January 2016 and August 2016, the Respondent obtained, possessed, and in at least one instance, submitted to the Member for processing, 5 pre-signed account forms in respect of 4 clients.

30. The pre-signed account forms consisted of order instruction, non-financial instruction, and Know-Your-Client forms.

31. By virtue of the foregoing, the Respondent failed to observe a high standard of ethics and conduct in the transaction of business and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Penalty

32. The Hearing Panel determined that it had to be satisfied regarding three considerations in setting appropriate penalties for the contraventions.

33. First, the penalties should be within the reasonable range of appropriateness taking into account similar decisions made by MFDA Hearing Panels in similar cases.

34. Secondly, the penalties should be fair and reasonable (i.e. proportional to the seriousness of the contraventions and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry.

35. Thirdly, the penalties should serve as a deterrent to the Respondent and to industry.

36. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the agreed penalty.

37. Staff proposed a total fine of \$17,500 and a costs award of \$5,000 and we accepted Staff's proposal.

38. The Hearing Panel took into consideration submissions of Staff, the precedent cases provided by Staff, and the MFDA Sanction Guidelines.

39. In particular we took into account that the Respondent's conduct occurred after the publication by the MFDA of a warning bulletin to the industry against such conduct and after the Respondent's Member had warned the Respondent against similar conduct on a prior occasion when the Respondent had signed an acknowledgement and undertaking not to continue such conduct.

40. Staff provided us with several precedent cases where the penalty varied from a low of \$11,000 to a high of \$20,000.

41. Many were settlement cases.

42. Costs awards were typically around \$2,500.

43. The precedent cases suggested to us that the fine in our case should be toward the top end of the range suggested by the precedent cases.

44. We noted that fines were higher in the precedent cases where the misconduct took place after publication of the warning bulletin by the MFDA and after a warning against the conduct by the respondent's Member.

45. We determined that the Respondent's unresponsiveness to the proceedings against him demonstrated that he does not recognize the seriousness of his misconduct. It also demonstrated his unwillingness to comply with the regulation of the securities industry and a lack of remorse for his conduct.

46. As mitigating factors, we took into account that there was no evidence of actual client harm from the conduct or lack of client authorization.

47. Staff submitted a bill of costs showing more than \$6,000 for some of the costs incurred in the investigation and prosecution of this matter.

48. We considered the bill of costs to be reasonable.

Conclusion

49. In conclusion, we were satisfied that the fine we ordered was within the range of appropriateness taking into consideration the precedent cases, was fair and reasonable in the circumstances, and would provide an adequate deterrent to the Respondent and to the industry in general.

50. Accordingly, we made the order referred to above.

DATED this 17th day of May, 2019.

"Paul M. Moore"

Paul M. Moore, QC
Chair

"Brigitte J. Geisler"

Brigitte J. Geisler
Industry Representative

"Guenther W. K. Kleberg"

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