



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: Troy Allen Hale

Heard: December 15, 2020 by electronic hearing in Calgary, Alberta

Decision: December 15, 2020

Reasons for Decision: March 9, 2021

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Adam Dudley
Sean Shore

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
)	
Darcy McAllister)	Counsel for the Respondent
)	
)	
Troy Allen Hale)	Respondent
)	
)	

I. INTRODUCTION

1. On August 21, 2020, the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Hearing concerning disciplinary proceedings which were commenced against Troy Allen Hale (the “Respondent”), pursuant to Sections 20 and 24 of MFDA By-Law No. 1.
2. On December 14, 2020, the Respondent entered into a settlement agreement (the “Settlement Agreement”) with MFDA staff (“Staff”) pursuant to which the Respondent agreed to be disciplined under Sections 20 and 24.1 of MFDA By-Law No. 1.
3. On December 15, 2020, a Settlement Hearing (“the Hearing”) took place by video conference before a Hearing Panel of the Prairie Region Council of the MFDA (the “Panel”) to determine whether or not the Settlement Agreement should be accepted, pursuant to Section 24.4.3 of MFDA By-Law No 1.
4. Both the Respondent and his legal counsel attended the Hearing.
5. At the conclusion of the Hearing, the Panel accepted the Settlement Agreement and issued an Order to that effect. These are the Panel’s reasons for that decision.

II. CONTRAVENTIONS

6. In the Settlement Agreement, the Respondent admitted to having committed the following violations of the MFDA By-Laws, Rules or Policies:
 - a) Between November 2016 and October 2017, the Respondent processed 18 transactions in respect of 18 clients as redemptions and purchases, rather than as switches, to ensure that the transactions counted toward sales targets established by the Member for the Respondent, thereby engaging in conduct which gave rise to a conflict of interest which the Respondent failed to disclose to the Member, or address by the exercise of responsible business judgement influenced only by the best interests of the client, contrary to the Member’s policies and procedures and MFDA Rule 1.1.2, 2.1.1, 2.1.4, and 2.5.1; and
 - b) Between November 2016 and May 2017, the Respondent obtained, possessed, and used to process transactions, 10 pre-signed account forms in respect of 10 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 of \$22,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to Section 24.1.1(b) of MFDA Bylaw No. 1;
 - b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA Bylaw No. 1;
 - c) the payment by the Respondent of the Fine and Costs shall be made and received by MFDA Staff in certified funds as follows:
 - i. \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$1,500 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - iii. \$3,500 (Fine) on or before the last business day of the first month following the date of the Settlement Agreement;
 - iv. \$3,500 (Fine) on or before the last business day of the second month following the date of the Settlement Agreement;
 - v. \$3,500 (Fine) on or before the last business day of the third month following the date of the Settlement Agreement;
 - vi. \$3,500 (Fine) on or before the last business day of the fourth month following the date of the Settlement Agreement;
 - vii. \$3,500 (Fine) on or before the last business day of the fifth month following the date of the Settlement Agreement;
 - viii. \$3,500 (Fine) on or before the last business day of the sixth month following the date of the Settlement Agreement;
 - d) the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.1.1, 2.1.4, 2.5.1; and
 - e) the Respondent will attend in person or via videoconference, on the date set for the Settlement Hearing.

IV. AGREED FACTS

8. The facts which Staff and the Respondent agreed would form the basis for the Settlement Agreement are set out at paragraphs 6 through 30 of that agreement as follows:

“Registration History

6. Commencing in January 2010, the Respondent has been registered in the securities industry.
7. From July 2013 to July 2018, the Respondent was registered as a dealing representative¹ (previously referred to as a mutual fund salesperson) in Alberta with BMO Investments Inc., a Member of the MFDA (the “**Member**”).
8. Commencing on August 15, 2018, the Respondent has been registered as a dealing representative with Investors Group Financial Services Inc., a Member of the MFDA.
9. At all material times, the Respondent carried on business in the Medicine Hat, Alberta area.

The Respondent Engaged in Conflicts of Interest

10. At all material times, the Member’s policies and procedures required its dealing representatives to refrain from engaging in conflicts of interest with clients.
11. From November 2016 to October 2017, the Respondent processed 18 transactions in respect of 18 clients as redemptions and purchases, rather than as switches.
12. In particular, the Respondent processed the redemptions of clients’ existing mutual funds or deposit products and subsequently purchased new mutual funds using the redemption proceeds, when the transactions could have been conducted as switches.
13. To process the switches, the Respondent had the clients sign redemption and purchase forms on the same day, with the purchases to be processed after the redemptions had been completed.
14. By processing the transactions in the manner described above, the Respondent exposed the clients to the risk of a change in the value of the mutual funds as the clients’ assets were not invested while the trades settled. Had the Respondent completed the transactions as switches, rather than redemptions and purchases, the transactions would not have exposed the clients to this risk as the assets would have remained invested.
15. The processing of transactions as redemptions of the existing mutual funds and deposit products and subsequently purchasing new mutual funds resulted in losses in 9 of the affected client accounts due to the changes in price between the dates that the redemptions and purchases were completed and the dates a switch could have been completed, as follows:

Client	Loss
RB and DB	\$1,000.84
KD and DD	\$249.71
PF	\$541.04
LG	\$500.01
GH	\$42.31
DH	\$150.83
CP	\$458.04

¹ In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

Client	Loss
RARL	\$139.28
RT and ST	\$118.19
TOTAL:	\$3,200.25

16. The Respondent processed the transactions as described above in order to, among other things, increase his compensation. At the material time, transactions carried out as redemptions and purchases contributed more towards meeting the annual sales targets set by the Member for Approved Persons than conducting transactions as switches. Had the transactions been conducted as switches, the amount of sales revenue that would have counted towards the applicable sales targets would have been approximately \$2,700. By processing the transactions as described above as redemptions and purchases, the amount of sales revenue that counted towards the applicable sales targets was approximately \$111,000.

17. The Respondent did not disclose to or obtain approval from the Member to process the transactions described above in paragraphs 11-16 as redemptions and purchases, rather than as switches.

Pre-Signed Account Forms

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

19. Between November 2016 and May 2017, the Respondent obtained, possessed, and used to process transactions, 10 pre-signed account forms in respect of 10 clients.

20. The pre-signed account forms all consisted of purchase order forms where the purchase order amount was left blank at the time the clients signed the form.

21. The Respondent obtained and used the pre-signed account forms described above as part completing redemption and purchase transactions to meet sales incentive targets, as described in paragraphs 11-16, above.

The Member's Investigation

22. In November 2017, the Member conducted a national review of trading activity among its Approved Persons, which resulted in the Member identifying the conduct which is the subject of the Settlement Agreement.

23. On or about March 6, 2018, the Member issued a warning letter to the Respondent regarding the conduct that is the subject of this Settlement Agreement.

24. The Member subsequently offered compensation to all clients who suffered a loss as a result of the Respondent processing mutual fund redemptions and purchases instead of switches.

Additional Factors

25. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

26. The Respondent has co-operated with the MFDA in its investigation.

27. There is no evidence of client complaints concerning the conduct described in this Settlement Agreement or that any of the transactions referenced in this agreement were processed without the authorization of the client.

28. The Respondent did not meet his sales target during the year between November 2016 and November 2017, and consequently, he did not receive any financial benefit as a result of processing the transactions described in paragraphs 11-16, above, as redemptions and purchases, rather than as switches.

29. The Respondent states that due to the financial implications of the ongoing Covid-19 pandemic, and significant monthly expenses that he incurs to address a health related condition of one of his children, the Respondent requires additional time to pay the fine that he has agreed to pay pursuant to the terms of this Settlement Agreement. The Respondent and Staff have agreed to permit the Respondent to pay the fine and the costs agreed upon in instalments payable over a 6 month period pursuant to the schedule set out in the terms of settlement below.

30. 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. The role a Hearing Panel performs at a Settlement Hearing is fundamentally different from the role it performs at a Contested Hearing.

10. When considering a Settlement Agreement, a Hearing Panel has only two options: to accept or reject the Settlement Agreement.

MFDA By-law No. 1, s.24.4.3

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 one of the reasons that settlement agreements which have been worked out by the parties should be respected, is because Hearing 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, *supra*, 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

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.

Appropriateness of the Proposed Penalty

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 Hearing 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 Hearing Panel in *Breckenridge (Re)* set out the following additional factors which a Hearing 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 Sanction Guidelines, as their name suggests, are not mandatory. They 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."

22. Staff submitted that in cases involving the type of misconduct in the present matter, the following factors listed in the Sanction Guidelines, are relevant to the Panel's decision:

- a) general and specific deterrence;
- b) public confidence;
- c) seriousness of the allegations proved against the Respondent;
- d) harm suffered by the investors;
- e) the Respondent's recognition of the seriousness of the misconduct; and

- f) previous decisions made in similar circumstances.

Application of the Factors Listed Above in the Present Case

Seriousness of the Allegations

Nature of the Misconduct: Conflict of Interest

23. The Respondent has admitted that he processed 18 transactions with respect to 18 clients, as redemptions and purchases, rather than as switches and that the reason he did this was so that the transactions would count towards the sale targets that were established for him by the Member.

24. This conduct exposed the Respondent's clients to the risk of sustaining a change in the value of their mutual funds because their assets were not invested while the trades settled.

25. Further, by processing the transactions for these 18 clients in a manner that potentially benefited himself and exposed the clients to unnecessary risk, the Respondent's conduct gave rise to a conflict of interest. As explained by the Hearing Panel in *Gaunt*:

A conflict of interest occurs when one party to a matter advances, uses or pursues his own interests in dealing with another person, to whom he has an obligation of dealing fairly, to the detriment of that other person or to his own advantage rather than the person to whom he owes the duty of fairness.

Gaunt (Re), MFDA File No. 201232, Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated September 20, 2013 at para. 47

26. MFDA Rule 2.1.4 requires that Approved Persons be aware of actual and potential conflicts of interest, and address such conflicts by the exercise of responsible business judgment influenced only by the best interests of the client.

27. In *Tonnies*, the Hearing Panel determined that the expression "responsible business judgment" requires "the exercise of care and diligence in the circumstances to address the conflict or potential conflict of interest always subject to being in the best interests of the client". The Hearing Panel further stated:

The exercise of responsible business judgment may therefore vary depending on the nature of the conflict of interest. In cases involving a significant, actual conflict of interest, the exercise of responsible business judgment may require a blanket prohibition on, or refusal to proceed with, the proposed type of transaction giving rise to the conflict. In contrast, in cases involving a potential conflict of interest of a very speculative and relatively minor nature, the exercise of responsible business judgment may require only that the client is directed to obtain independent advice before proceeding with the proposed transaction.

28. Using responsible business judgment, the Respondent ought to have recognized that he was exposing his clients to a risk of loss from a possible change in the value of their funds while the trade settled and the clients' assets were not invested.

29. In this case, nine of the affected client accounts sustained losses due to the changes in price which occurred between the dates that the redemptions and purchases were completed and the dates a switch could have been completed. The Member has reimbursed the clients for those losses.

30. MFDA Rule 2.5.1 requires Members to supervise Approved Persons and establish policies and procedures to ensure that the handling of the Member's business is in compliance with MFDA By-Laws, Rules, Policies and applicable Securities legislation.

31. MFDA Rule 1.1.2 places a corresponding obligation on Approved Persons to facilitate the Member's compliance with MFDA Rules. This includes complying with the policies and procedures which are established and implemented by the Member in that regard.

32. These Rules were discussed by the Hearing Panel in *Frank* as follows:

56 MFDA Rule 2.5.1 requires Members to establish, implement and maintain policies and procedures to ensure that the handling of its business is in accordance with MFDA By-laws, Rules and Policies and with applicable securities legislation.

57 Such policies and procedures are meaningless and cannot achieve their intended objectives if Approved Persons are not required to comply with them. MFDA Rule 1.1.2 is clear that Approved Persons share the responsibility of ensuring that obligations set out in the MFDA Rules are followed and must do their part to support the Member's obligations to be compliant with its regulatory obligations.

58 In the context of policies and procedures of a Member, and especially policies designed to facilitate regulatory supervision by the Member, the failure of an Approved Person to comply with the Member's policies constitutes a regulatory violation.

Frank (Re), MFDA File No. 201407, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 5, 2015, at paras. 56-58

33. In this matter, the Member had policies and procedures regarding entering into a conflict of interest, which the Respondent contravened.

34. Finally, Rule 2.1.1 requires that an Approved Person, among other things, must:

- 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.

35. 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) stated 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

36. MFDA Hearing Panels have specifically held that engaging in a switch avoidance strategy is conduct that contravenes Rule 2.1.1.

Leonard (Re), MFDA File No. 201919, Hearing Panel of the Central Regional Council, Decision and Reasons dated October 2, 2020

Rana (Re), MFDA File No. 201871, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 19, 2019

37. Accordingly, the Respondent has contravened MFDA Rules: 2.1.1, 2.1.4, 2.5.1 and 1.1.2.

Nature of the Misconduct: Pre-Signed Account Forms

38. In pursuing the switch avoidance strategy, the Respondent obtained and used 10 Pre-Signed Account Forms, contrary to MFDA Rule 2.1.1.

39. As discussed above, MFDA Rule 2.1.1 is a broad rule that establishes the standard of conduct to be followed by all Approved Persons. It is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule has been interpreted and applied in a purposive manner in a wide range of circumstances. As the Hearing

Panel in *Breckenridge (Re)*, *supra*, stated, the Rule articulates the most fundamental obligations of all registrants in the Securities industry.

40. Since October 31, 2007, the MFDA has made clear to Members and Approved Persons, in 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

41. 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), MFDA No. 200814, Hearing Panel of the Central Regional Council, decision and reasons dated April 8, 2011

42. 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

43. Hearing Panels of the MFDA, the Investment Industry Regulatory Organization of Canada ("IIROC") and provincial securities commissions have all confirmed that the possession and use of pre-signed forms is prohibited.

Price (Re), *supra*, at para.135

44. On the basis of the foregoing, the Respondent engaged in conduct which was prohibited by MFDA Rule 2.1.1 and which the Panel regards as serious misconduct.

The Respondent's Experience in the Securities Industry

45. The Respondent has been registered in the Securities industry since January, 2010. As such, he ought to have been well aware of his obligations under the MFDA's By-Laws, Rules and Policies, and the rules and policies of the Member with whom he was registered at the relevant time.

The Respondent's Recognition of the Seriousness of the Misconduct

46. By entering into the Settlement Agreement, the Respondent has acknowledged responsibility for his misconduct and has avoided the necessity for the MFDA to incur the additional time and expense of a contested hearing regarding what Staff described as a "complex case".

47. In his submission before the Panel, the Respondent's counsel stated that the Respondent is remorseful and by entering into the Settlement Agreement, has demonstrated his desire to make amends for his conduct.

48. Counsel pointed out that the Respondent did not have a prior disciplinary record and he confirmed that the Respondent is working under close supervision by the Member with whom he is currently registered.

Client Harm and Benefits Received by the Respondent

49. There was no evidence of any unauthorized trades, nor were there any client complaints.

50. Nonetheless, as a result of the Respondent's conduct, his clients suffered a total loss of \$3,200.25.

51. We note that as the result of his misconduct, the Respondent did increase his sales revenue but he still did not meet the Member's sales target and did not, therefore, receive any actual financial benefit from the misconduct although this was certainly his intention in carrying out the impugned conduct.

Deterrence

52. Both the Supreme Court of Canada and MFDA Hearing Panels have held that deterrence is an appropriate factor to be taken into account when determining the appropriateness of a penalty.

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

Tonnies (Re), *supra*, at para. 47

53. The effect of general deterrence should advance the goal of protecting investors. A penalty levied should be sufficient so as to affirm public confidence in the regulatory system and ensure 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 Corp. (Re), *supra*, at para. 61

54. Staff submitted that the proposed fine of \$22,500.00, together with costs of \$2,500.00 is a serious penalty and will achieve the goals of specific and general deterrence, having regard to the aggravating factors cited above. We agree.

Post-Bulletin Misconduct

55. In the present matter, Staff submitted that because the misconduct occurred in 2016 and 2017, there is an additional consideration for the Hearing Panel to take into account. In MFDA Bulletin #0661-E dated October 2, 2015, Staff reminded Members and Approved Persons that “Signature Falsification” is not permissible under the MFDA Rules. “Signature Falsification” includes conduct such as pre-signed account forms, altered account forms and falsification of the client’s signature. The Bulletin advised Members and Approved Persons that Staff would be seeking enhanced penalties at MFDA Discipline Hearings for conduct that occurred after the publication of that Bulletin on October 2, 2015.

56. MFDA Hearing Panels have consistently 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

Lo (Re), MFDA File No. 201776, Hearing Panel of the Central Regional Council, Decision and Reasons dated February 7, 2018, at paras 16 and 18

57. In this matter, the Panel notes that all 10 account forms were obtained after the MFDA issued Bulletin #0661-E on October 2, 2015.

Previous Decisions in Similar Cases

58. Staff provided the Panel with the following cases in which, it submitted, penalties had been imposed in similar circumstances:

Case	Facts	Outcome
<i>Leonard (Re)</i> ²	<p>The Respondent admitted that he:</p> <ul style="list-style-type: none"> • from December 2015 to February 2017, processed 43 transactions in respect of 38 clients as redemptions and purchases, rather than as switches, which exposed the clients to risk of market loss and which the Respondent knew would result in the transactions counting towards the Member’s sales targets for the Respondent (Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1) • from December 2015 to February 2017 failed to execute 18 mutual fund purchases on a timely basis as required by the Member’s policies and procedures, which resulted in 21 clients incurring losses in their accounts (Rules 2.1.1, 1.1.2, 2.5.1) <p>Additional Factors:</p> <ul style="list-style-type: none"> • The Respondent has limited financial means. • Clients suffered losses of approximately \$13,000 	<p><i>Settlement Hearing</i></p> <ul style="list-style-type: none"> • 2 year prohibition • Fine of \$2,500 • Costs of \$2,500
<i>Rana (Re)</i> ³	<p>The Respondent admitted that he:</p> <ul style="list-style-type: none"> • processed transactions in two client accounts as redemptions and purchases rather than as switches, to ensure that the transactions counted towards the Member's sales targets for the respondent, thereby engaging in conduct which gave rise to a conflict of interest. (Rules 2.1.4, 1.1.2, and 2.5.1) • obtained, photocopied and used a partially completed signed account form in order to process a transaction on behalf of client MIK. (Rules 2.1.1, 1.1.2, and 2.5.1) • altered and used an account form to process a transaction without having client FH initial the alteration. (Rules 2.1.1, 1.1.2, and 2.5.1) <p><u>Additional Factors:</u> (para. 12)</p> <ul style="list-style-type: none"> • The Respondent was in his first year in the industry; he immediately admitted the misconduct; Member imposed discipline; there were no client losses; and the transactions were authorized. 	<p><i>Settlement Hearing</i></p> <ul style="list-style-type: none"> • Fine of \$12,500 • Costs of \$5,000

² *Leonard (Re)*, supra

³ *Rana (Re)*, supra

Case	Facts	Outcome
<i>Guo (Re)</i> ⁴	<p>The Respondent admitted that he:</p> <ul style="list-style-type: none"> • between December 2016 and April 2017 opened and processed trades in at least 29 fictitious mutual fund client accounts in order to receive promotional monies that were payable to new banking clients and to increase his sales revenues for compensation purposes 	<p><i>Hearing (ASF with contested penalty)</i></p> <ul style="list-style-type: none"> • Permanent Prohibition • Fine of \$15,000 • Costs of \$5,000
<i>Sawwaf (Re)</i> ⁵	<p>Respondent admitted that he:</p> <ul style="list-style-type: none"> • between November 2007 and August 2012, he or his assistant for whom he was responsible, obtained, possessed and, in some instances, used to process transactions, 7 pre-signed account forms in respect of five clients. (Rule 2.1.1) • between May 2012 and August 2015, he or his assistant, falsified and in some instances, used to process transactions, 3 account forms in respect of 3 clients, by altering information on the account forms without having the clients initial the alterations. (Rule 2.1.1) • between July 2014 and October 2016, the respondent processed purchases of mutual funds in the accounts of 19 clients which were subject to DSC, without keeping records that the clients were informed of all fees and charges. (Rules 2.4.4, 5.1(b)(iv) and 1.1.2) <p><u>Additional Factors:</u> (paras. 17-22) Member reimbursed clients \$46,889 re. DSC fees; respondent was cooperative and received no financial benefit.</p>	<p><i>Settlement Hearing</i></p> <ul style="list-style-type: none"> • 3 month suspension • Fine of \$10,000 • Costs of \$2,500

59. The Panel agrees with Staff’s submission that of the above cases the two most relevant are the *Leonard* and *Rana* decisions, because they both deal with switch avoidance. These decisions demonstrate the upper and lower end of the range for penalties in similar circumstances. The Panel agrees that the facts in this matter warrant a penalty which falls in the middle of the fines imposed in those cases.

VI. CONCLUSION

60. Having reviewed the Settlement Agreement and having considered the submissions from both Staff and counsel for the Respondent, the Panel is satisfied that the penalties proposed in the Settlement Agreement are reasonable and proportionate having regard to the Respondent’s conduct.

61. We find that the proposed penalties will deter the Respondent and other Approved Persons from engaging in the type of conduct that is the subject of these proceedings and will advance both

⁴ *Guo (Re)*, MFDA File No. 201949, Hearing of the Central Regional Council, Decision and Reasons dated April 2, 2020

⁵ *Sawwaf (Re)*, MFDA File No. 201888, Hearing of the Central Regional Council, Decision and Reasons dated January 17, 2019

the public interest and the MFDA’s objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

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

DATED this 9th day of March, 2021.

“Sherri Walsh”

Sherri Walsh
Chair

“Adam Dudley”

Adam Dudley
Industry Representative

“Sean Shore”

Sean Shore
Industry Representative

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