



**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: Helen Catherine Harry**

Heard: December 9, 2020 by electronic hearing in Toronto, Ontario  
Decision and Reasons: January 11, 2021

**DECISION AND REASONS**

Hearing Panel of the Central Regional Council:

Joan Smart  
Rob Christianson  
Eugene Park

Chair  
Industry Representative  
Industry Representative

Appearances:

Maria L. Abate	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Helen Catherine Harry	)	Respondent, not in attendance or represented by
	)	counsel
	)	

## **I. INTRODUCTION**

1. By Notice of Hearing, dated July 6, 2020, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced proceedings against Helen Catherine Harry (the “Respondent”) indicating that a first appearance would take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel”) on September 2, 2020.
2. On July 31, 2020, staff of the MFDA (“Staff”) sent a copy of the Notice of Hearing, together with the MFDA’s Rules of Procedure and the MFDA’s Guide to the Disciplinary Process (the “Process Documents”) to the Respondent’s email address.
3. On August 5, 2020, Staff sent a letter, together with the Process Documents, to the Respondent at her last known address, which was a PO Box address in Stirling, ON, by regular and registered mail.
4. Staff subsequently had a drivers’ license search conducted relating to the Respondent, which indicated a new address for the Respondent in Stirling, ON (the “New address”).
5. On August 18, 2020, Staff sent the Process Documents by regular and registered mail and by courier to the Respondent at the New address. The package was delivered by courier on August 20, 2020.
6. The Process Documents were also personally served on the Respondent on August 19, 2020, at the New address.
7. Neither the Respondent, nor a representative on her behalf, attended the first appearance on September 2, 2020.
8. As the Respondent had not clearly been served at least 30 days prior to the first appearance in accordance with the MFDA Rules of Procedure, the Hearing Panel ordered on September 2, 2020, that the matter was to proceed to a subsequent appearance to be held by teleconference on September 23, 2020.
9. On September 10, 2020, the Respondent was personally served at her New address with a letter from Staff and a copy of the Order, dated September 2, 2020.

10. Neither the Respondent, nor a representative on her behalf, attended at the second appearance on September 23, 2020.

11. On October 5, 2020, Staff couriered to the Respondent a letter enclosing a copy of the MFDA News Release, dated September 23, 2020, and the delivery was signed for the following day by a person at the Respondent's New address. On October 5, 2020, Staff also sent the same documents to the Respondent at her New address by regular mail. The MFDA letter and the News Release advised the Respondent that the Hearing Panel had set December 9, 2020, as the date for the disciplinary hearing against her.

## **II. THE RESPONDENT'S FAILURE TO REPLY OR ATTEND THE HEARING**

12. The Respondent did not serve or file a Reply.

13. Neither the Respondent, nor a representative on her behalf, attended the hearing on December 9, 2020.

14. According to MFDA Rule of Procedure 8.4, where a Respondent fails to serve and file a Reply, a Hearing Panel may proceed with the hearing on the merits, accept the facts alleged and conclusions drawn in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 of MFDA By-law No. 1. Pursuant to MFDA Rule of Procedure 7.3, a Hearing Panel may similarly proceed with a hearing where the Respondent fails to attend the hearing.

15. The Hearing Panel was satisfied that the Respondent had effective notice of the hearing, and given the Respondent's failure to file a Reply or attend the hearing, determined that it was appropriate to proceed with the hearing on the merits in her absence.

## **III. ALLEGATIONS AGAINST THE RESPONDENT**

16. Staff alleged that the Respondent engaged in the following conduct, contrary to MFDA Rule 2.1.1:

**Allegation #1:** Between January 2009 and January 2019, the Respondent obtained, possessed, and in some instances, used to process transactions, 14 pre-signed account forms in respect of 5 clients.

**Allegation #2:** Between November 2013 and December 2018, the Respondent altered and used to process transactions, 18 account forms in respect of 18 clients, by altering information on the account forms without having the clients initial the alterations.

**Allegation #3:** Between January 13, 2011 and March 22, 2016, the Respondent cut and pasted three client signatures onto two new account forms, and submitted the account forms for processing.

#### **IV. FACTS**

##### **Our Approach to the Evidence**

17. At the hearing, Staff submitted two affidavits in evidence. The first was an affidavit of David Forestieri, a Compliance Officer at Investia Financial Services Inc. (“Investia”), being the firm with whom the Respondent was registered at the relevant time. The second affidavit was of Rob Lambshead, the MFDA Investigator who had conducted the investigation into the conduct of the Respondent. Both witnesses also attended the hearing and responded to questions from the Hearing Panel.

18. According to Rule 1.6(1) of the MFDA Rules of Procedure, “a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence”. We received certain evidence that was hearsay. However, we considered the nature of the evidence as we weighed the evidence and determined its reliability.

19. Pursuant to MFDA Rule of Procedure 13.4 a “Hearing Panel may allow the evidence of a witness or proof of a particular fact or document to be given by sworn statement”.

20. Based on the evidence provided to us at the hearing by affidavit and responses to Hearing Panel questions by the affiants, the pertinent facts as we have found them are set out below.

## **Respondent's Registration History**

21. The Respondent was registered as a mutual fund salesperson (now known as a dealing representative) with Investia from December 2006 to August 2019.

22. Investia terminated the Respondent, effective August 20, 2019, largely as a result of the conduct which is the subject of this proceeding. She is not currently registered in the securities industry.

## **Investia's Internal Investigation**

23. In January 2019 the Investia audit team conducted a 100% client file review on the Respondent's book of business and identified the following deficiencies:

- a) 13 unused and one used pre-signed account forms in files of five clients;
- b) 23 altered forms, on which changes had been made without client initials to confirm that the clients had authorized the changes, in files of 21 clients; and
- c) two account forms on which three client signatures had been cut and pasted from other forms, in files of two clients.

24. In January 2019, Investia filed a report regarding the deficient forms on the MFDA's Member Event Tracking System ("METS").

25. Also in January 2019, Mr. Forestieri commenced an internal investigation into the deficient forms. That included providing the Respondent with a listing and copies of the deficient forms and requesting that she acknowledge that the subject forms had been found in the files of clients whose accounts she serviced, and explain the reasons for the deficiencies in the forms.

26. With respect to the pre-signed account forms, the Respondent admitted that she obtained and possessed the pre-signed forms in client files and indicated she did so predominantly for client convenience.

27. With respect to the altered account forms, the Respondent admitted that she altered the forms that she subsequently used. She claimed she altered the forms when: clients requested

changes but she forgot to have the clients initial the changes; or when errors had been discovered on the forms subsequent to meetings with clients during which the forms had been signed.

28. The Respondent acknowledged that she had cut signatures from one form and pasted it on another form on two occasions.

### **Investia's Internal Discipline on the Respondent**

29. Effective May 13, 2019, Investia placed the Respondent under strict supervision for at least 90 days.

30. Investia required the Respondent to sign a Letter of Undertaking acknowledging that she had read and would abide by Investia's compliance policies and procedures and the MFDA Rules.

31. Investia also imposed an administrative penalty of \$500 plus mailing costs associated with the mailing referred to in paragraph 33 below.

32. The Respondent accepted the discipline imposed on her by Investia.

### **Investia's Mailing to the Respondent's Clients**

33. On June 4, 2019, Investia sent a client mailing along with a three year transactional summary to each client whose accounts had been serviced by the Respondent, requesting that they review the summaries and advise Investia of any unauthorized transactions in their accounts.

34. None of the client responses received by Investia reported any unauthorized transactions, inaccurate Know Your Client records or other concerns.

### **MFDA's Investigation of the Respondent**

35. Subsequent to Investia's filing on METS, Staff commenced an investigation into the Respondent's conduct relating to the subject forms.

36. As a result of the investigation, Staff was able to confirm Investia's findings with respect to the forms, subject to an exception relating to the altered forms. Staff found that the Respondent had altered 18 forms in respect of 18 clients (Investia had found more). The difference was

explained by Mr. Lamshead as being in part because the MFDA only went back six years and in part because Staff determined that some of the changes were not material.

### **Investia's Compliance Policies and Procedures**

37. Since at least 2007, Investia's compliance policies and procedures ("CCPMs") prohibited its dealing representatives from holding pre-signed documents in client files.

38. Similarly, the 2012, 2014 and 2017 CCPMs noted that under no circumstances should an Investia representative be holding pre-signed documents in a client file, and referenced MFDA Notice MR-0066. The 2017 CCPMs added that under no circumstances should changes be made to a NCAF/KYC form subsequent to the client signing the document without client acknowledgement (ie. all changes initialled by the client).

39. In addition, Investia periodically distributed compliance memoranda to its representatives. For example, a 2016 memorandum stated that the use of pre-signed forms or any other signature falsification to further facilitate a transaction or account update was strictly prohibited, and referenced MFDA Bulletin #0661-E. Compliance memoranda issued in 2017 and 2018 regarding improper use of forms specifically noted that examples of misuse included: pre-signed forms; cutting and pasting to re-use a previous signature; and altering information on a signed document without the client initialling the document to show the change was approved.

## **V. CONSIDERATIONS**

### **1) MFDA Jurisdiction Over the Respondent**

40. As a mutual fund dealing representative in Ontario and an Approved Person of a Member of the MFDA until August 2019, the Respondent was bound by and agreed to observe and comply with MFDA Rules.

41. Pursuant to s. 24.1.4 of MFDA By-law No. 1, an Approved Person remains subject to the jurisdiction of the MFDA notwithstanding that such an individual ceases to be an Approved Person.

## 2) Misconduct

42. MFDA Rule 2.1.1 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 its 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.

43. In this case we have found, as alleged by Staff, that the Respondent, within files of clients whose accounts she serviced, possessed:

- a) 14 pre-signed account forms in files associated with the accounts of five clients, one of which she used;
- b) 18 altered forms on which changes had been made without client initials to confirm that they had authorized the changes, in files associated with accounts of 18 clients, which the Respondent used; and
- c) two account forms on which three client signatures had been cut and pasted from other forms, in files associated with accounts of two clients.

44. The deficient forms included Order Instruction Forms, Know Your Client Updates and a variety of other forms.

45. We have found that the conduct described in the above paragraph was contrary to MFDA Rule 2.1.1. We were particularly concerned about the Respondent's action in cutting and pasting client signatures on forms.

46. The Respondent's misconduct in obtaining and using pre-signed account forms, altering account forms and cutting and pasting client signatures was serious. Each of those actions can, among other things, negatively impact the integrity of account documents, destroy the audit trail, impede a Member's ability to supervise accounts and respond to client complaints and potentially facilitate unauthorized trading and misappropriation.

47. The MFDA has been warning Approved Persons against the use of pre-signed and altered account forms and signature falsification for a number of years by way of Staff Notices and Bulletins that are distributed to MFDA members.

*MFDA Staff Notice #0035, dated December 10, 2004*

*MFDA Staff Notice #MSN-0066, dated October 31, 2007 (updated January 26, 2017)*

*MFDA Bulletin #0661-E, dated October 2, 2015.*

48. While most of the pre-signed forms were not used by the Respondent, that does not excuse the misconduct. However, we have considered that fact, albeit to a very limited extent, in determining an appropriate penalty.

### **3) Penalty**

49. In the present case, Staff sought the following penalties against the Respondent:

- a) a fine of \$20,000; and
- b) costs as per the Bill of Costs which Staff presented at the hearing, which showed its costs as \$8,400.

50. The primary goal of securities regulation is the protection of the investor. In addition, the goals include fostering public confidence in the capital markets.

*Pezim v British Columbia (Superintendent of Brokers), [1994] 2 SCR 557 (SCC), at paras. 59, 68*

51. Sanctions imposed by a Hearing Panel should be protective and intended to prevent future conduct that is likely to harm investors or the capital markets.

### **Factors to Consider in Determining An Appropriate Sanction**

#### **a) Seriousness of the misconduct**

52. As we noted above, possessing and using pre-signed, altered and otherwise compromised account forms is a serious breach of MFDA Rule 2.1.1.

53. We consider as an aggravating factor that a number of the altered account forms and one of the cut and pasted signatures on forms were obtained after the issuance of MFDA Bulletin #0661-E on October 2, 2015, in which the MFDA warned that it would be seeking increased penalties in future cases such as this.

b) The Respondent's past conduct and experience in the capital markets

54. The Respondent was registered as an Approved Person with Investia from 2006 to 2019, and as a result, she knew or should have known of the requirements in the MFDA Rules and Staff Notices, as well as Investia's compliance policies, procedures and memoranda.

55. However, we considered it to be a mitigating factor that there was no evidence of any prior disciplinary action against the Respondent by the MFDA.

c) Recognition by the Respondent of the seriousness of the misconduct

56. The Respondent did not demonstrate that she recognized the seriousness of her misconduct, as indicated by her failing to file a Reply or attend the hearing.

57. However, we noted that the Respondent cooperated in the internal investigation at Investia, essentially admitting to the deficiencies in the forms, and agreed to the internal discipline imposed by Investia.

d) Harm suffered by investors and benefits received by the Respondent

58. We considered as mitigating factors that there was no evidence of:
- i. investor harm or that the underlying transactions had not been authorized by the subject clients; or
  - ii. any benefits having been received by the Respondent, other than those she would normally be entitled to receive had she carried out the transactions in the proper manner.

e) Sanction imposed by the Member

59. As a result of the conduct in this case, Investia placed the Respondent under strict supervision, imposed an administrative penalty and ultimately terminated the Respondent's agency relationship and registration with Investia. We regarded the latter action as a significant penalty that was imposed on the Respondent.

f) Deterrence

60. We were of the view that specific deterrence was not a particularly relevant factor to be considered in determining an appropriate sanction, given that the Respondent is no longer registered in the securities industry and is over the usual retirement age.

61. The Hearing Panel was of the view, however, that a significant penalty was required for the purpose of general deterrence in order to communicate to other Approved Persons that obtaining and using pre-signed, altered and otherwise compromised account forms will not be tolerated in the mutual fund industry. In turn, that should serve to protect investors and foster confidence in the capital markets.

g) Previous decisions made in similar circumstances

62. Staff provided us with the summary below of cases which Staff submitted involved similar circumstances to the case at hand. In each of the cases the subject conduct occurred both before and after the issuance of MFDA Bulletin #0661-E and there was no evidence of client losses or lack of authorization for the underlying transactions. In the first four cases, the Respondent had accepted responsibility by entering into a settlement agreement.

CASE	FACTS	OUTCOME
<p><i>Nash, Gerard Augustine (Re)</i>, [2019] MFDA Hearing Panel of the Atlantic Regional Council, Reasons for Decision dated February 7, 2019, MFDA File No. 2018113</p>	<ul style="list-style-type: none"> <li>• The Respondent obtained, possessed, and in some instances used to process transactions, 29 pre-signed account forms in respect of 23 clients</li> <li>• The Respondent also had 1 altered account form</li> <li>• No financial benefit to the Respondent</li> <li>• No previous disciplinary history with MFDA</li> </ul>	<p>The Hearing Panel approved the Settlement Agreement with the following terms:</p> <ul style="list-style-type: none"> <li>• \$13,000 Fine</li> <li>• \$2,500 Costs</li> </ul>
<p><i>Baksh, Mubarak (Re)</i>, [2019] MFDA Hearing Panel of the Central Regional Council, Reasons for Decision dated September 20, 2019, MFDA File No. 201939</p>	<ul style="list-style-type: none"> <li>• The Respondent obtained and possessed 31 pre-signed account forms</li> <li>• No financial benefit to the Respondent</li> <li>• No previous disciplinary history with MFDA</li> <li>• The Respondent completed the Conduct and Practices Handbook course at the request of his Member</li> </ul>	<p>The Hearing Panel approved the Settlement Agreement with the following terms:</p> <ul style="list-style-type: none"> <li>• \$13,000 Fine</li> <li>• \$2,500 Costs</li> </ul>
<p><i>Warr, Timothy Donald (Re)</i>, [2020] MFDA Hearing Panel of the Atlantic Regional Council, Reasons for Decision dated September 25, 2020, MFDA File No. 202037</p>	<ul style="list-style-type: none"> <li>• The Respondent altered 4 account forms.</li> <li>• The Respondent obtained and in some instances used, 26 pre-signed account forms</li> <li>• No financial benefit to the Respondent</li> <li>• No previous disciplinary history with the MFDA</li> </ul>	<p>The Hearing Panel approved the Settlement Agreement with the following terms:</p> <ul style="list-style-type: none"> <li>• \$14,000 Fine</li> <li>• \$2,500 Costs</li> </ul>
<p><i>Montina, Giuseppe Walter (Re)</i>, [2019] MFDA Hearing Panel of the Prairie Regional Council, Reasons for Decision dated December 11, 2019, MFDA File No. 201954</p>	<ul style="list-style-type: none"> <li>• The Respondent altered 14 account forms</li> <li>• The Respondent obtained and in some instances used, 29 pre-signed account forms</li> <li>• The Respondent re-used 1 account form</li> <li>• No financial benefit to the Respondent</li> </ul>	<p>The Hearing Panel approved the Settlement Agreement with the following terms:</p> <ul style="list-style-type: none"> <li>• \$14,500 Fine</li> <li>• \$2,500 Costs</li> </ul>

CASE	FACTS	OUTCOME
<p><i>Gusain, Singh Kishor Nand (Re)</i>, [2019] MFDA Hearing Panel of the Central Regional Council, Reasons for Decision dated May 17, 2019, MFDA File No. 201887</p>	<ul style="list-style-type: none"> <li>• The Respondent obtained, and in one instance used, 5 pre-signed account forms</li> <li>• The Respondent altered 16 account forms</li> <li>• The Respondent had been previously warned on the same misconduct</li> <li>• The Respondent did not attend the hearing and failed to recognize the seriousness of the misconduct</li> </ul>	<p>The Hearing Panel imposed the following penalty in the Uncontested Hearing on its merits:</p> <ul style="list-style-type: none"> <li>• \$17,500 Fine</li> <li>• \$5,000 Costs</li> </ul>

63. We noted that in none of the above cases was a penalty imposed as high as \$20,000, as proposed by Staff. While we understood the reasons for Staff’s proposed \$20,000 fine, in our opinion, it was not warranted in all the circumstances of this case.

## VI. CONCLUSION

64. Having considered all of the above factors, we determined that a reasonable and proportionate fine to impose against the Respondent was \$16,000.

65. At the hearing, Staff submitted their Bill of Costs in the amount of \$8,400, which did not include, among other things, time expended at the hearing.

66. The Hearing Panel determined that it would be appropriate to impose a cost award of \$5,000, particularly in light of the fact that the Respondent did not file a Reply which might have limited the issues and reduced the amount of time Staff was required to spend in this case.

**DATED** this 11<sup>th</sup> day of January, 2021.

“Joan Smart”

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Joan Smart  
Chair

“Rob Christianson”

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Rob Christianson  
Industry Representative

“Eugene Park”

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Eugene Park  
Industry Representative

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