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: William Robert Harvey

Heard: February 23, 2021 by electronic hearing in Edmonton, Alberta
Decision: February 23, 2021
Reasons for Decision: October 7, 2021

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh	Chair
Birju Shah	Industry Representative
Annette Stephens	Industry Representative

Appearances:

Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
William Robert Harvey	)	Respondent

I. INTRODUCTION

1. On October 24, 2020, William Robert Harvey ("the Respondent") entered into a settlement agreement ("the Settlement Agreement") with Staff at the Mutual Fund Dealers Association of Canada ("MFDA") pursuant to which the Respondent agreed to be disciplined under sections 20 and 24.1.1 of MFDA By-law No. 1.

2. On November 9, 2020, the MFDA issued a Notice of Settlement Hearing giving notice that an electronic hearing was to be held before a Hearing Panel of the Prairie Regional Council ("the Panel") of the MFDA on February 23, 2021 to consider whether, pursuant to section 24.4 of By-law No. 1 of the MFDA, the Panel should accept the Settlement Agreement.

3. The Respondent was in attendance when the settlement hearing convened by way of videoconference on February 23, 2021. He was self-represented.

4. At the conclusion of the hearing, the Panel accepted the Settlement Agreement and issued an Order to that effect.

5. Here are the Panel's reasons for that decision.

II. CONTRAVENTIONS

6. In the Settlement Agreement, the Respondent admitted to the following violations of the by-laws, rules or policies of the MFDA:

a) Between January 2016 and January 2019, the Respondent obtained, possessed, and used to process transactions, 21 pre-signed account forms in respect of 13 clients, contrary to MFDA Rule 2.1.1; and

b) In May 2019, the Respondent altered and used to process transactions one account form by altering information on the account form without having the client initial the alterations, 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 in the amount of $10,000 in certified funds pursuant to section 24.1.1(b) of By-law No. 1, upon acceptance of this Settlement Agreement;

b) the Respondent shall pay costs in the amount of $2,500 in certified funds pursuant to section 24.2 of By-law No. 1, upon acceptance of this Settlement Agreement;

c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and

d) the Respondent will attend in person, on the date set for the Settlement Hearing.

IV. AGREED FACTS

8. The agreed facts are set out at paragraphs 7 through 26 inclusive of the Settlement Agreement and are reproduced below as follows:

7. Commencing in June 2000, the Respondent has been registered in the securities industry.

8. From June 2012 to December 2019, the Respondent was registered in Alberta as a dealing representative with Investia Financial Services Inc. ("Investia"), a Member of the MFDA.

9. Since December 2019, the Respondent has been registered with Sentinel Financial Management Corp. ("Sentinel").

10. At all material times, the Respondent carried on business in the Cochrane, Alberta area.

Pre-Signed Account Forms

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

12. Between January 2016 and January 2019, the Respondent obtained, possessed, and used to process transactions, 21 pre-signed account forms in respect of 13 clients.

13. The pre-signed account forms consisted of Order Instruction and Know-Your-Client Update forms.

Altered Account Forms

14. In May 2019, the Respondent altered and used to process transactions one account form by altering information on the account form without having the client initial the alteration.

15. The altered form was an Order Instruction form and the alterations made by the Respondent consisted of the Respondent writing trade related instructions on the original signed form without obtaining client initials.

Investia's Investigation

16. In March 2019, Investia identified some of the forms that are the subject of this Settlement Agreement during an onsite branch review. Investia subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining pre-signed that are the subject of this Settlement Agreement.

17. On May 7, 2019, Investia placed the Respondent under close supervision.

18. In July 2019, Investia sent audit letters to all of the clients whose accounts the Respondent serviced, asking them to review and verify the accuracy of all trading activities executed in their accounts in the past three years. No clients reported any concern.

19. In September 2019, during a review of the Respondent's trades, Investia identified one additional altered form processed by the Respondent on May 31, 2019.

20. On November 12, 2019, Investia issued a warning letter to the Respondent concerning his use of pre-signed forms.

21. On December 4, 2019, Investia terminated the Respondent for reasons unrelated to the matters described in this Settlement Hearing.

22. Since December 5, 2019, the Respondent has been registered with Sentinel. Sentinel has placed the Respondent under close supervision until completion of this proceeding.

Additional Factors

23. The Respondent has not previously been the subject of a MFDA disciplinary proceeding.

24. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

25. There is no evidence of any client complaints, client loss, or that the transactions were unauthorized.

26. 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 the Hearing Panel performs at a Contested Hearing.

10. When considering a Settlement Agreement, a Hearing Panel has only two options: either 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
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> *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 settlement agreements which have been worked out by the parties should be respected, 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.

> *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."
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> *British Columbia (Securities Commission) v Seifert,* 2007 BCCA 484, para. 31

14. Although the *Seifert* decision 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

Appropriateness of the Proposed Penalty

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. …

Sterling Mutuals Inc. (Re), supra, at para. 36

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

Application in the Present Case

Nature of the Misconduct: Pre-signed Account Forms

20. The Respondent has admitted that he obtained, possessed and used to process transactions, 21 pre-signed account forms.

21. MFDA Rule 2.1.1 sets the standard of conduct to be followed by all Approved Persons. It is a broad rule which 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)* stated:

The Rule articulates the most fundamental obligations of all registrants in the securities industry.

Breckenridge (Re), supra, at page 20

22. Rule 2.1.1 requires that an Approved Person, among other things:

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.

23. 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) 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.
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> *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

24. Further, as Roscoe J. stated in *Ripley v Investment Dealers Association (Business Conduct Committee)*:

> . . to require that evidence be given in proof of such issues of basic ethics and honesty would be an affront to the common sense, experience and intelligence of the members of every professional Disciplinary Committee.
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> *Ripley v Investment Dealers Association (Business Conduct Committee),* [1990] NSJ No. 295 (NSSC) at page 16 (Quicklaw), affirmed [1991] NSJ No. 452 (NSCA)

25. Since October 31, 2007, the MFDA has made clear to 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

26. 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

27. 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*

28. 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.
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> *Price (Re), supra,* at paras. 122-124

29. Even though there was no evidence that the Respondent intended to use the pre-signed forms for any improper purpose, the use of such forms, as set out above, is prohibited because the presence of client's signatures on such forms can no longer be taken as confirmation that the client authorized a particular trade and compromises the Member's ability to investigate and respond to a client complaint concerning the propriety of trading in their account. This is why pre-signed forms are prohibited regardless of whether the Approved Person's intention is to enhance client convenience and irrespective of whether a client had ostensibly endorsed the practice.

> *Byce (Re), supra,* at para. 6

30. We confirm, therefore, that the prohibition on the use of pre-signed forms applies regardless of whether:

a) the client was aware, or authorized the use, of the pre-signed forms; and

b) the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

Byce (Re), supra, at para. 6

Wellman (Re), MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015 at para. 10

31. We agree with Enforcement Counsel's written submission that by obtaining, possessing, and using pre-signed account forms as described in Part III of the Settlement Agreement, the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1 that should be regarded as serious.

Nature of the Misconduct – Altered Account Forms

32. The Respondent also altered one account form by altering information on the form without having the client initial the alterations.

33. Hearing panels have held that altering or falsifying forms is also a contravention of the standard of conduct required by MFDA Rule 2.1.1.

Byce (Re), *supra,* at para. 6

34. Like pre-signed account forms, the creation, possession or use of an altered or falsified form is considered serious misconduct. The reasoning in *Price (Re)* cited above, as to why pre-signed account forms affect the integrity and reliability of account documents applies equally to altered and falsified forms. Plus, with respect to altered or falsified forms, there exists the possibility that the changes that were made to the forms were done without the client's knowledge or consent.

Price (Re), supra, at paras. 122-124

Wellman (Re), supra, at para. 11

35. Accordingly, by using an altered account form as described in Part III of the Settlement Agreement, the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1 that should be regarded as serious.

Post Bulletin Misconduct

36. Enforcement Counsel submitted that the primary aggravating factor in determining the appropriate penalty in this matter is the fact that all of the forms which are the subject of the

misconduct were processed after the MFDA issued its further Bulletin on this subject: Bulletin #0661-E, on October 2, 2015.

37. After that Bulletin was issued Staff advised that it would be seeking enhanced penalties at MFDA discipline proceedings for conduct that occurred after the Bulletin's publication. MFDA Hearing Panels have 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
>
> *Ackerman*, MFDA File No. 201734, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated September 13, 2017 at para. 29

The Respondent's Experience in the Securities Industry

38. The Respondent has been registered as a mutual fund dealing representative since June 2000. As an experienced dealing representative, he ought to have known and complied with the requirements of both the Member and the MFDA.

The Respondent's Past Conduct

39. The Respondent has not been the subject of any prior discipline proceedings by the MFDA.

The Respondent's Recognition of the Seriousness of his Misconduct

40. By entering into the Settlement Agreement, the Respondent has taken responsibility for his misconduct and has saved the MFDA the time, resources and cost associated with conducting a full hearing of the allegations.

Client Harm and Benefits Received by the Respondent

41. There is no evidence of client harm; nor evidence that the Respondent received any financial or other benefit for his conduct. There was also no client complaint.

Deterrence

42. Both the Supreme Court of Canada and MFDA Hearing Panels have held that it is appropriate for deterrence to be among the factors 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), 2005 LNCMFDA 7, at para. 47

43. The effect of general deterrence should advance the goal of protecting investors. As a result, the penalty levied should be sufficient so as to affirm public confidence in the regulatory system and 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

44. The Respondent's admitted conduct as set out in the Settlement Agreement merits sanctions from the standpoint of both specific and general deterrence.

45. We find that the proposed fine of $10,000 is necessary and sufficient to achieve the goals of specific and general deterrence, having regard to the circumstances set out in the Settlement Agreement. This fine demonstrates that the Respondent's misconduct in all of the circumstances is serious and has significant consequences. It will also deter others in the capital markets from engaging in similar activity.

Previous Decisions in Similar Cases

46. The Panel considered the following cases in which, Enforcement Counsel submitted, penalties had been imposed in similar circumstances:

CASE	FACTS	OUTCOME
Beausoleil, MFDA File No. 201913, Hearing Panel of the Central Regional Council, Reasons for Decisions dated June 10, 2019	• Respondent obtained, possessed, and used to process transactions, 29 pre- signed account forms • Post-bulletin conduct	• Fine of $11,500 • Costs of $2,500
McIntyre, MFDA File No. 201891, Hearing Panel of the Pacific Regional Council, Reasons for Decisions dated October 26, 2018	• Respondent obtained, possessed, and used to process transactions, 35 pre- signed account forms • Post-bulletin conduct	• Fine of $11,000 • Costs of $2,500

CASE	FACTS	OUTCOME
Nash, MFDA File No. 2018113, Hearing Panel of the Atlantic Regional Council, Reasons for Decisions dated December 4, 2018	• Respondent obtained, possessed, and used to process transactions, 29 pre- signed account forms • Respondent altered and used to process transactions, 1 account form • Post-bulletin conduct	• Fine of $13,000 • Costs of $2,500

VI. CONCLUSION

47. Having reviewed the Settlement Agreement and having considered both written and oral submissions from Enforcement Counsel, the Panel is satisfied that the penalty which is set out in the Settlement Agreement falls within a reasonable range of appropriateness having regard to the nature and extent of the Respondent's misconduct and all of the circumstances of this matter.

48. The Panel believes the proposed penalty is reasonable and proportionate and will deter the Respondent and other Approved Persons from engaging in the type of conduct that is the subject of these proceedings. It will advance the public interest and the MFDA's objective to enhance investor protection. The penalty will also ensure high standards of conduct in the mutual fund industry and will foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process itself.

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

DATED this 7th day of October, 2021.

"Sherri Walsh"
Sherri Walsh
Chair

"Birju Shah"
Birju Shah
Industry Representative

"Annette Stephens"
Annette Stephens
Industry Representative

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