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: Mohammed Yaasir Husain

Heard: March 17, 2016, in Vancouver, British Columbia
Reasons for Decision: April 15, 2016

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. Thomas R. Braidwood, Q.C.	Chair
Cecilia Macharia	Industry Representative

Appearances:

Christopher Corsetti	)	For the Mutual Fund Dealers Association of Canada
Mohammed Yaasir Husain	)	In Person

1. This is a hearing to determine whether or not Mohammed Yaasir Husain (the "Respondent") did on March 26, 2014 falsify a client's signature on an account form in order to process redemptions in the client's account contrary to MFDA Rule 2.1.1.

Registration History

2. The Respondent was registered in Saskatchewan from April 17, 2012 to December 6, 2013 with TD Investment Services Inc. ("TD") and later the Respondent registered in British Columbia from December 5, 2013 to September 12, 2014 with TD. His current registration status in BC states "Suspended (Employment Termination)".

3. The Respondent was terminated from TD for falsifying a client's signature.

Circumstances

4. The facts are not in dispute. On March 26, 2014, the Respondent met with his client to process two redemptions from his client's account. During the interview with the client on that day, the Respondent realized that the firm had changed the method under which such a transfer would be made. The Respondent did not understand the new procedure so he could not complete the transaction under the new instructions. Accordingly, he asked a colleague to complete the transaction and this was done.

5. It turns out that the transaction was not properly completed and a new Transaction and Account Maintenance Form needed to be signed by the client, who became quite short tempered when he learnt of the error from the Respondent. He had been promised that the funds would be transferred the next day.

6. By the time the Respondent determined that this new form was required, some four days had passed. In the meantime, the client was exceedingly upset and belligerent and would not come into the office to sign the new form.

7. Under these circumstances, the Respondent signed in his own handwriting the client's name to the bottom of the form.

8. There is no question then that this qualifies as a forgery and is a breach of MFDA Rule 2.1.1.

9. In his defence, his written submission reads in part as follows:

> "I do not accept the fact that I falsified the cleint's [sic] signature because my intentions were to process the cleints [sic] transaction as per his instructions into clients discount brokerage account. I did not [sic] try to sign an identical signature rather put his name on the document with an intention that it was authorized by the client and it was an honest mistake and I have accepted it."

10. The Respondent further submits:

> "…My judgement was clouded as I have been yelled at by the client and now he wasn't responding to my calls so I signed the paper I did not try and intimate his actual signature and it was an honest mistake and I regret it. I just wanted to get out of the situation and made a bad decision."

11. Section 2.1.1 reads as follows:

"Standard of Conduct. Each Member and each Approved Person of a Member shall:

a) deal fairly, honestly and in good faith with its clients;
b) observe high standards of ethics and conduct in the transaction of business;
c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation."

12. Page 2 of The Transaction and Account Maintenance Form had a line and under the line was printed "signature of applicant". It was above that designation that the Respondent signed the name of the client.

13. TDS had a code of ethics and standards and under the heading Unethical Behaviour/Unacceptable Sales Practices, there is a sentence that reads in part:

> "falsifying any account information, record or document in any way",
>
> "signing or initialling documents for and on behalf of customers (except when acting as attorney or agent in an approved capacity as described in section 0409 – Power of Attorney/Trading Authority."

Authorities

14. Hearing Panels have held that falsifying forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1.

> *Pang (Re)*, [2015] Hearing Panel of the Pacific Regional Council, MFDA File No. 201563 Order dated January 6, 2016 ("Pang") Staff's Book of Authorities Tab 6.
>
> *Chan (Re)*, [2015], Hearing Panel of the Pacific Regional Council, MFDA File No. 201564 Order dated March 3, 2015 ("Chan") Staff's Book of Authorities Tab 7.
>
> *Ewart (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201528, Panel Decision dated September 11, 2015, Staff's Book of Authorities, ["Ewart" Tab 8].

15. The creation, possession or use of a falsified form is considered serious misconduct. The reasoning is that it affects the integrity and reliability of account documents.

16. In *Bell (Re)*, the registrant, among other things, falsified the signature of 3 clients, all of whom had authorized the transaction, and any financial benefit to the registrant was minimal.

> *Bell (Re)* [2005], I.D.A.C.D. No. 15, Alberta District Council, Panel Decision, dated March 21, 2005 ("Bell").

17. Paragraph 35 reads as follows:

> "Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole."

18. In the Ontario Securities Commission's recent decision dated July 13, 2015 in *Reaney*, the Commission cited *Bell* and discussed the actual and potential harm of falsified signatures at paras 82-89, see excerpt below of paras 85-87:

> [85] One type of actual harm is the inevitable impairment of the integrity of the audit trail. Having a reliable audit trail is important to the sponsoring firm and to its regulators. A firm's ability to assess its employees' compliance with regulatory requirements, and a regulator's ability to do the same, would both be undermined if the very documents upon which the assessment relies are not genuine.
>
> [86] Another type of actual harm caused by forging signatures on client documents is that in at least some cases the client's confidence in the registrant, and in the registrant's approach to the recording of key information, is undermined.
>
> [87] In addition, as noted above, a number of different types of potential harm arise. For example, because every investment recommendation and every investment decision is based upon information contained on the forms, any inaccuracy in the information necessarily taints a recommendation or decision made based on that information.
>
> *In the Matter of Christopher Reaney*, OSC Reasons and Decision Dated July 13, 2015 at para 85-87

19. By way of conclusion, the circumstances advanced by the Respondent do not amount to a defence and accordingly, we find that the Respondent has breached MFDA Rule 2.1.1 as alleged.

Penalty

20. It is the submission of MFDA that:

a) the Respondent pay a fine in the amount of $5,000.00 forthwith, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
b) the Respondent pay costs in the amount of $5,000.00 forthwith, pursuant to section 24.2 of MFDA By-law No. 1.

Specific Factors Concerning the Appropriateness of the Penalty

21. The primary goal of securities regulation is the protection of the investor.

> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994], 2 S.C.R. 577, Iacobucci,
>
> *Tonnies*, MFDA (File 200503) Decision of the Prarie Regional Counsel dated June 27, 2005 at p. 21, Staff's Book of Authorities, Tab 2

22. Staff submits that when determining the appropriate sanctions to impose, a Hearing Panel should consider:

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) the protection of the integrity of the MFDA's enforcement processes.

Tonnies, Supra at p. 22, Staff's Book of Authorities, Tab 2

23. Factors that Hearing Panels frequently consider when determining whether a penalty is appropriate include the following:

a) the seriousness of the allegations provided against the Respondent;
b) the Respondent's past conduct, including prior sanctions;
c) the Respondent's experience and level of activity in the capital markets;
d) whether the Respondent recognizes the seriousness of the improper activity;
e) the harm suffered by investors as a result of the Respondent's activities;
f) the benefits received by the Respondent as a result of the improper activity;
g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
i) 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;
j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
k) previous decisions made in similar circumstances.

> *Headley (Re)*, 200509 MFDA, at page 25-26, MFDA Staff's Book of Authorities, Tab 15

24. We are of the opinion however that a fine of $2,500.00 would be sufficient together with $5,000.00 for costs.

25. It is obvious from all of the circumstances that there was no gain to the Respondent in his conduct. In fact, although his conduct amounted to a serious breach of the rules, it did assist his client in the transfer that was promised.

26. In reaching this decision, we have considered, amongst other things, the following cases:

a) *Brent L. Barnai*, MFDA File No. 201325;
b) *Jacqueline Wise*, MFDA File No. 201213; and
c) *Shi Jin (Michael) Li*, MFDA File No. 201527.

27. We have not altered the suggestion of $5,000.00 by way of costs due to the fact the hearing panel had to be convened in order to hear the question of liability.

Conclusion

28. The Hearing Panel finds that the Respondent has breached MFDA Rule 2.1.1 and accordingly the following penalties should apply:

a) the Respondent be fined the amount of $2,500.00;
b) the Respondent shall pay costs in the amount of $5,000.00; and
c) the Respondent shall have three (3) months from the 15th of March 2016 in order to pay the above-noted two amounts.

DATED this 15th day of April, 2016.

"Thomas R. Braidwood"

The Hon. Thomas R. Braidwood, Q.C.
Chair

"Cecilia Macharia"

Cecilia Macharia
Industry Representative

DM 476882 v1