



**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: Kane Michael Kachur**

Heard: April 4, 2022 by electronic hearing in Saskatoon, Saskatchewan

Decision: April 4, 2022

Reasons for Decision: July 6, 2022

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Sherri Walsh  
Adam Dudley  
Birju Shah

Chair  
Industry Representative  
Industry Representative

Appearances:

Zaid Sayeed	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
Kane Michael Kachur	)	Respondent
	)	
	)	

## **I. INTRODUCTION**

1. On January 13, 2022, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to Sections 20 and 24 of MFDA By-law No. 1 in respect of Kane Michael Kachur (the “Respondent”).
2. Two days prior, on January 11, 2022 the Respondent and MFDA Staff (“Staff”) entered into a settlement agreement pursuant to which the Respondent agreed to a proposed settlement of matters for which he could be disciplined on the exercise of the discretion of the Hearing Panel pursuant to S. 24.1 of MFDA By-law No. 1 (the “Settlement Agreement”).
3. On April 4, 2022 a Settlement Hearing (the “Hearing”) was held by videoconference before a Hearing Panel of the MFDA Prairie Regional Council (the “Panel”). The Respondent appeared at the Hearing on his own behalf.
4. At the outset of the Hearing, the Panel granted Staff’s request for an order that the Hearing be held in the absence of the public, pursuant to MFDA Rule of Procedure 15.2(2) and s. 20.5 of MFDA By-law No. 1.
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 its decision.

## **II. CONTRAVENTIONS**

6. In the Settlement Agreement, the Respondent admitted to having committed the following violation of the MFDA’s By-laws, Rules or Policies:

Between September 2014 and August 2020, the Respondent, or his assistant for whom he was responsible, altered and used to process transactions, 29 account forms in respect of 18 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

## **III. TERMS OF SETTLEMENT**

7. Staff and the Respondent agreed to the following terms of settlement:
  - a) the Respondent shall pay a fine in the amount of \$18,000 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 \$5,000 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 the Settlement Hearing in person (via videoconference).

#### **IV. AGREED FACTS**

8. The facts which Staff and the Respondent agreed upon to reach the Settlement Agreement are set out at paragraphs 7 through 18 of that agreement and are reproduced below:

##### **Registration History**

7. Commencing in February 1998, the Respondent has been registered in Saskatchewan as a dealing representative with Manulife Securities Investment Services Inc. (“Member”), a Member of the MFDA.

8. At all material times, the Respondent carried on business in the Saskatoon, Saskatchewan area.

##### **Altered Account Forms**

9. Between September 2014 and August 2020, the Respondent, or his assistant for whom he was responsible, altered and used to process transactions, 29 account forms in respect of 18 clients by altering information on the account forms without having the clients initial the alterations,

10. The altered forms consisted of a Letter of Direction, New Account Application, Transfer Authorization, Order Entry, Pre-Authorized Chequing and Know-Your-Client Change forms.

11. The alterations made by the Respondent consisted of the Respondent adding or altering fund amounts, fund codes, fund names, client account numbers, and dates on the original signed form without obtaining client initials.

##### **Member’s Investigation**

12. In September 2019, the Member discovered 16 of the altered account forms described above during an onsite branch review. The Member subsequently commenced a review of all of the client files serviced by the Respondent and discovered the remaining altered account forms described above.

13. The Member conducted an investigation into the Respondent’s conduct, which included contacting the affected clients and requesting that they review account statements and trade confirmations and advise the Member if there were any trades the clients did not authorize. No clients reported any concerns to the Member.

14. On September 23, 2019, the Member issued a warning letter to the Respondent, placed him under close supervision for a period of 90 days, and imposed a fine of \$3,250 for his use of altered forms.

##### **Additional Factors**

15. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

16. 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.

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

18. 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: 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." (In *re Milewski*, [1999] I.D.A.C.D. No. 17)

*Sterling Mutuals Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008, at para. 37

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 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.

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

14. Although the *Seifert* decision dealt with an agreement that was before the British Columbia Securities Commission, the case has frequently been 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.

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

### **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 para. 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*, *supra*, at paras. 59 & 68

18. In determining the appropriateness of a proposed penalty, Hearing Panels frequently also cite the decision in *Breckenridge (Re)*, where the 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 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 (the "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.

## **Application of the Factors Listed Above in the Present Case**

### **Seriousness of the Misconduct**

21. The admitted misconduct in this matter - obtaining or using pre-signed forms and altering forms without obtaining client initials is conduct which amounts to serious breaches of MFDA Rule 2.1.1.

### **Standard of Conduct**

22. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to all registrants in the mutual fund industry. It requires that each Member and Approved Person: deal fairly, honestly, and in good faith with clients, observe high standards of ethics and conduct in the transaction of business and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

23. The Rule has been interpreted and applied in a purposeful manner in a wide range of circumstances. As stated by the MFDA Hearing Panel in *Breckenridge (Re)*:

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

*Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38, at para. 71

### **Altered Forms are not Permissible**

24. Hearing Panels of the MFDA, IIROC and Provincial Securities Commissions have confirmed that the possession and use of pre-signed forms is prohibited.

*Price*, MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011, at para. 135

25. MFDA Hearing Panels have consistently found that when an Approved Person alters information on an account form without having the client initial the form to show that the client is aware of the change and has authorized it, the Approved Person engages in conduct that is contrary to MFDA Rule 2.1.1.

*MacDonald (Re)*, [2021] Hearing Panel of the Central Regional Council, MFDA Hearing No. 202105, Panel Decision dated March 30, 2021 at para. 32

*Wong (Re)*, [2021] Hearing Panel of the Prairie Regional Council, MFDA Hearing No. 201943, Panel Decision (Misconduct) dated February 22, 2021 at para. 46

26. The use of such forms has been held to be a contravention of MFDA Rule 2.1.1 because it amounts to engaging in business conduct or practice which is unbecoming or detrimental to the public interest.

*Wong (Re), supra* at para. 17

27. The Hearing Panel in *Price* gave a description of the dangers posed by pre-signed forms which can be summarized as follows:

- a) They present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;
- b) At its worst they create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct toward a client; and,
- c) They subvert the ability of a Member to properly supervise trading activity.

*Price, supra*, at paras. 122-124

28. With respect to this last point cited, the Panel in *Price* pointed out that the reason that pre-signed forms interfere with the Member's ability to properly supervise trading activity is because they destroy the audit trail. The Panel noted:

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, supra*, at para. 124

29. Hearing Panels have confirmed that the prohibition on the use of pre-signed account forms applies regardless of whether the client was aware or authorized the use of the pre-signed forms and whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

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

30. Among other things, altering account forms without obtaining client initials 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.

31. As the Hearing Panel explained in *Wong (Re)*:

The reason for the stringency associated with the rules regarding pre-signed and altered forms is clear. Approved persons may not engage in discretionary trading. Moreover, the preparation and preservation of an audit trail is essential in the securities and mutual fund industries. An approved person must be able to support the claim that trades or transactions were based on client instructions.

Any departure from the required standard will result in a determination that the dealing representative has contravened the MFDA Rules and will result in penalty. Ignorance of the rule, negligence, or mere carelessness affords no defence. The breach is much like a simple speeding ticket: travelling in excess of the posted limit is an offence. No excuse exonerates the speeder. Likewise, no excuse exonerates a dealing representative who obtains a pre-signed form from a client and then completes and uses it, or who alters a properly executed form without the alteration being initialed [sic] by the client.

*Wong (Re), supra*, at paras. 27 & 28

32. For all of the above reasons, the Panel finds that the Respondent engaged in misconduct that must be regarded as serious.

33. His misconduct is further aggravated by the fact that some of the account forms were obtained after the MFDA issued Bulletin #0661-E.

34. The prohibition against the use of pre-signed and improperly altered forms has been widely publicized by the MFDA to all of its Members and dealing representatives. See, for example:

- MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017); and
- MFDA Bulletin #0661-E dated October 2, 2015

35. Some of the conduct which is the subject of these proceedings occurred after the MFDA issued Bulletin #0661-E. MFDA Hearing Panels have considered this to be an aggravating factor.

*Terrill (Re)*, [2019] Hearing Panel of the Prairie Regional Council, MFDA File No. 201909, Decision dated May 9, 2019 at paras. 27 and 29

36. In reaching our decision, the Panel also noted that in recent decisions, MFDA Hearing Panels have increasingly emphasized the need to impose penalties which will dissuade Approved Persons from engaging in the type of misconduct which is the subject of these proceedings:

This kind of misconduct by Approved Persons has occurred too frequently in the past. The sanction in this case should serve the goal of general deterrence by sending a message to others in the mutual fund industry that the subject conduct will not be tolerated and that those who engage in similar conduct will face meaningful penalties. If that does not prove to be the case in the future, the MFDA may need to consider imposing even more significant sanctions in order to curtail similar misconduct in the mutual fund industry

*Myers (Re)*, [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202145, Hearing Panel Decision dated January 10, 2022 at para. 29

See also: *Ramjohn (Re)*, [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202067, Panel Decision dated October 22, 2021 at para. 1.

### **The Respondent's Experience in the Securities Industry**

37. Having been registered as a Mutual Fund Dealing Representative since February 1998 the Respondent was experienced in the securities industry and ought to have known that the conduct which is the subject of these proceedings was a clear violation of his regulatory obligations.

### **The Respondent's Past Conduct Including Prior Sanctions**

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

### **The Respondent's Recognition of the Misconduct**

39. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and has saved the MFDA the time, resources and expenses associated with a full disciplinary hearing.

### **Client Harm and Benefits Received by the Respondent**

40. As the facts in the Settlement Agreement identify, the Member conducted an investigation into this matter and confirmed that in all of the transactions, the forms were authorized. This was an important consideration for the Panel in reaching our decision.

41. There was also no evidence of client harm or client complaint. Nor was there evidence that the Respondent received any financial or other benefit through his misconduct beyond any commissions and fees that he would ordinarily have been entitled to receive had the transactions been carried out in the proper manner.

### **Deterrence**

42. 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

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.

*Cartaway Resources Corp. (Re)*, *supra*, at para. 61

44. We find that the penalty which is proposed in the Settlement Agreement is sufficient to demonstrate that the Respondent’s misconduct in all of the circumstances is serious and carries significant consequences.

45. The proposed penalty will specifically deter the Respondent from engaging in similar activity by imposing a meaningful sanction upon him which reflects the seriousness of the misconduct at issue.

46. It will also act as a general deterrent by reinforcing the message that the misconduct described in these proceedings will not be tolerated within the mutual fund industry and will result in significant sanctions.

47. As noted earlier in these Reasons, MFDA Hearing Panels have recently commented with dismay that misconduct similar to the misconduct engaged in by the Respondent, continues to occur.

48. In reaching our decision on this matter, therefore, the Panel has taken into consideration the fact that the proposed penalty is necessary in order to achieve effective deterrence within the industry.

**Previous Decisions made in Similar Circumstances**

49. The Panel agrees with Staff’s submission that the following cases were sufficiently similar for us to consider in determining the appropriateness of the penalty agreed upon by the parties.

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS
<i>Romaniuk (Re)</i> , [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202155, Decision dated January 20, 2022,	<ul style="list-style-type: none"> <li>• 18 pre-signed account forms in respect of 12 clients; and</li> <li>• 5 altered account forms in respect of 4 clients.</li> </ul>	Settlement: <ul style="list-style-type: none"> <li>• \$6,000 fine; and</li> <li>• Costs of \$2,500.</li> </ul>	<i>Member fine of \$14,000</i> <ul style="list-style-type: none"> <li>• Post-bulletin conduct</li> </ul>
<i>Mandic (Re)</i> , [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202031, Decision dated August 19, 2020	<ul style="list-style-type: none"> <li>• 30 pre-signed account forms in respect of 16 clients</li> <li>• 1 altered account form in respect of 1 client.</li> </ul>	Settlement: <ul style="list-style-type: none"> <li>• \$8,000 fine; and</li> <li>• Costs of \$2,500.</li> </ul>	<i>Member fine of \$14,000</i> <ul style="list-style-type: none"> <li>• Post-bulletin conduct</li> </ul>

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS
<i>MacDonald (Re)</i> , [2021] <i>supra</i>	<ul style="list-style-type: none"> <li>• 1 pre-signed account form in respect of 1 client</li> <li>• 20 altered account forms in respect of 17 clients.</li> </ul>	Settlement: <ul style="list-style-type: none"> <li>• \$14,000 fine; and</li> <li>• Costs of \$2,500.</li> </ul>	<ul style="list-style-type: none"> <li>• Post-bulletin conduct</li> </ul>
<i>Kliever (Re)</i> , [2021] Hearing Panel of the Prairie Regional Council, MFDA File No. 202139	<ul style="list-style-type: none"> <li>• 7 pre-signed account forms in respect of 5 clients; and</li> <li>• 26 altered account forms in respect of 22 clients</li> </ul>	Settlement: <ul style="list-style-type: none"> <li>• \$14,500 fine; and</li> <li>• Costs of \$2,500.</li> </ul>	<i>Member fine of \$992</i> <ul style="list-style-type: none"> <li>• Post-bulletin conduct</li> </ul>

50. In reviewing these decisions and to reach our determination, the Panel took into consideration the fact that, as was the case in some of the decisions cited above, the Member in this matter imposed a fine on the Respondent for the same conduct which is the subject of these proceedings.

## VI. CONCLUSION

51. Having reviewed the Settlement Agreement and having considered Staff's submissions, both written and oral, 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 in all of the circumstances.

52. The penalty is reasonable and proportionate and will deter the Respondent and other Approved Persons from engaging in the type of misconduct that is the subject of these proceedings. It will advance the public interest and the MFDA's objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

53. For all of the above reasons the Panel, therefore, accepts the Settlement Agreement.

**DATED** this 6<sup>th</sup> day of July, 2022.

“Sherri Walsh”

---

Sherri Walsh  
Chair

“Adam Dudley”

---

Adam Dudley  
Industry Representative

“Birju Shah”

---

Birju Shah  
Industry Representative

DM 894220