



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: Marek Stanislaw Kawka

Heard: July 9, 2020 by electronic hearing in Toronto, Ontario
Decision: July 9, 2020
Reasons for Decision: August 11, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Emily Cole
Guenther W. K. Kleberg
Joseph Yassi

Chair
Industry Representative
Industry Representative

Appearances:

Sarah Glickman)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Jonathan Preece)	Counsel for the Respondent
)	
)	
Marek Kawka)	Respondent
)	
)	

I. INTRODUCTION

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement dated June 8, 2020 (“Settlement Agreement”) between staff of the MFDA (“Staff”) and Marek Stanislaw Kawka (“Respondent”).

2. After reviewing the Settlement Agreement and the material filed by Staff and hearing the submissions of counsel for Staff and counsel for the Respondent, the Hearing Panel accepted the Settlement Agreement attached as Schedule “1” and signed an order reflecting our approval. These are the reasons for our decision.

II. MOTION TO ABRIDGE THE NOTICE PERIOD

3. At the outset of the hearing, Staff moved to abridge the notice period required to be given to the public of this Settlement Hearing.

4. Rule 15.2 of the MFDA *Rules of Procedure* provides that 10 days’ notice of a Settlement Hearing be given to the public.

5. In this case, the Notice of Settlement Hearing was posted on the MFDA website on June 30, 2020, nine days before today’s hearing.

6. In accordance with the general principles of the MFDA *Rules of Procedure* and the general powers given to us under those rules, we have the authority to abridge the notice period.

MFDA Rules of Procedure 1.3(1), 1.5(1) and 2.2(1)

7. The Hearing Panel was of the view that abridging the notice period would facilitate the most expeditious and cost-effective determination of this settlement hearing. The Hearing Panel also considered that despite the public notice requirement, Settlement Hearings are usually held in the absence of the public. The Hearing Panel considered that there was no financial harm to the investors. Further, the public will have access to our reasons for decision and the record of the settlement hearing, if any. The Hearing Panel was therefore satisfied that the public would not be prejudiced by the relief requested and ordered the notice period abridged.

III. CONTRAVENTIONS

8. Based on the Agreed Facts set out below the Respondent admits that:
- a) between February 2014 and March 2018, he obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of nine clients, contrary to MFDA Rule 2.1.1; and
 - b) between March 2014 and February 2017, he altered and used to process transactions, 11 account forms in respect of six clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

IV. PROPOSED SANCTIONS

9. Staff and the Respondent agree and consent to the following proposed sanctions:
- a) the Respondent shall pay a fine in the amount of \$11,500 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No.1, in installments as follows:
 - i. \$6,000 upon acceptance of this Settlement Agreement; and
 - ii. \$5,500 on or before the last business day of the second month following the acceptance of the Settlement Agreement;
 - b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement by the Hearing Panel, pursuant to s. 24.2 of MFDA By-law No.1;
 - c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - d) the Respondent will attend in person or by teleconference on the date set for the Settlement Hearing.

V. AGREED FACTS

Registration History

10. Since 1991, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative). Since 2003, the Respondent has been registered with Investia Financial Services Inc. (the "Member"), a Member of the MFDA.

11. At all material times, the Respondent conducted business in the Mississauga, Ontario area.

Pre-Signed Account Forms

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

13. Between February 2014 and March 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of nine clients.

14. The pre-signed account forms included order forms, Know-Your-Client forms, and transfer authorization forms.

Altered Account Forms

15. Between March 2014 and February 2017, the Respondent altered and used to process transactions, 11 account forms in respect of six clients, by altering the following information on the account forms without having the client initial the alterations.

16. The Respondent altered information on the account forms, including order instructions and client information, without having the clients initial the alterations.

The Member's Investigation

17. On February 21 and 26, 2019, during a routine branch review, the Member identified the account forms that are the subject of this Settlement Agreement. As part of this review, the Member reviewed all client files serviced by the Respondent.

18. Between April 25 and August 23, 2019, the Member placed the Respondent under strict supervision.

19. On August 19, 2019, the Member sent audit letters to all clients serviced by the Respondent to confirm whether the clients had authorized the transactions in their accounts. No clients raised any concerns in response to this inquiry.

Additional Factors

20. There is no evidence that the Respondent received any financial benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
21. There is no evidence of client loss or lack of authorization for the underlying transactions.
22. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
23. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

VI. ANALYSIS

A. Jurisdiction of the Hearing Panel

24. A Hearing Panel is authorized to either accept or reject a settlement agreement.

Section 24.4.3 of MFDA By-law No. 1

25. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing 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.”

Milewski (Re), [1999] I.D.A.C.D. No. 17.

Sterling Mutuals Inc. (Re), 2008 LNCMFDA 16 at para 37

26. Settlements are to be encouraged. They make a significant contribution to meeting the MFDA’s primary objective of investor protection by providing a practical and efficient way of addressing misconduct in the securities industry. Where the Respondent takes responsibility and admits his misconduct and the parties can agree upon appropriate sanctions, settlements can save time and conserve the regulator’s limited resources. Settlements also provide certainty and are likely to result in greater compliance with the sanctions imposed.

British Columbia (Securities Commission v. Seifert, [2006] B.C.J. No 225 at paras. 48-49 (S.C.), aff'd [2007] B.C.J. No 2186 at para. 31 (C.A.)

B. The Seriousness of the Misconduct

27. The Respondent admitted to two serious contraventions involving:

- i. pre-signed account forms; and
- ii. altered account forms.

i. Pre-signed Account Forms`

28. The Respondent obtained, possessed and, in some instances used to process transactions, 15 pre-signed forms in respect of nine clients.

ii. Altered Account Forms

29. The Respondent altered and used to process transactions, 11 account forms in respect of six clients by altering information on the account forms without having the client initial the alterations.

30. The Respondent's obtaining and using pre-signed forms and making unauthorized changes to forms adversely affects the integrity and reliability of account documents, destroys the audit trail and prevents the Member from effectively supervising its Dealing Representatives and protecting clients.

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), [2011] Hearing Panel of the Ontario Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011, at paras 122-124.

31. While there was no evidence of a lack of client authorization or financial harm, use of pre-signed forms and altering forms are nonetheless serious contraventions of the standard of conduct established by MFDA Rule 2.1.1.

Dias Pereira (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201652, Reasons for Decision dated September 18, 2017

Chen, P (Re), [2019] Hearing Panel of the Pacific Regional Council, MFDA File No. 201910, Reasons for Decision dated June 10, 2019.

C. Factors considered

i. Serious breach of MFDA Rules

32. The use of pre-signed and altered account forms is a serious breach of MFDA Rule 2.1.1.

Dias Pereira (Re) [2017], *supra*, MFDA Staff's Book of Authorities, Tab 5

Chen, P (Re), [2019], *supra*, MFDA Staff's Book of Authorities, Tab 8

ii. Respondent has nearly 30 years' experience and ought to have known better

33. The Respondent has been registered in the mutual fund industry since 1991. As an experienced mutual fund salesperson, he ought to have known and respected the compliance requirements of the Member and the MFDA.

iii. No investor loss

34. There is no evidence of financial loss suffered by the clients.

Settlement Agreement, para. 18

iv. The Respondent did not benefit from his misconduct

35. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding beyond the commissions and fees that he would ordinarily be entitled to had the transactions been carried out in the proper manner.

Settlement Agreement, para. 17

v. Significant penalty will deter the Respondent and others

36. The proposed penalty is significant and helps the MFDA send a message to the Respondent and others in the capital markets about the seriousness of the misconduct at issue.

D. Costs

37. The costs award is appropriate and consistent with previous MFDA decisions.

VII. CONCLUSION

38. We are of the view that in these circumstances, the proposed sanctions, a fine in the amount of \$11,500 and \$2,500 costs will serve as a specific deterrent to the Respondent and a general deterrent to others in the industry who may contemplate engaging in similar misconduct.

39. Staff provided four MFDA decisions which addressed similar misconduct: *Parker (Re)*, [2020] Hearing Panel of the Pacific Regional Council, MFDA File No. 201946, Reasons for Decision dated April 6, 2020, *Baksh (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201939, Reasons for Decision dated September 20, 2019, *Dias Pereira (Re)*, [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201652, Reasons for Decision dated September 18, 2017 and *Chen, P (Re)*, [2019] Hearing Panel of the Pacific Regional Council, MFDA File No. 201910, Reasons for Decision dated June 10, 2019.

40. Based on a review of these cases and taking into consideration the factors discussed above, we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

41. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against the Respondent.

DATED this 11th day of August, 2020.

“Emily Cole”

Emily Cole
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Joseph Yassi”

Joseph Yassi
Industry Representative



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: Marek Stanislaw Kawka

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Marek Stanislaw Kawka (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").
2. Staff conducted an investigation of the Respondent's activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.
4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada ("MFDA"):

- a) between February 2014 and March 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 9 clients, contrary to MFDA Rule 2.1.1; and
 - b) between March 2014 and February 2017, the Respondent altered and used to process transactions, 11 account forms in respect of 6 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.
5. Staff and the Respondent agree and consent to the following terms of settlement:
- a) the Respondent shall pay a fine in the amount of \$11,500 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No.1, in installments as follows:
 - i. \$6,000 upon acceptance of this Settlement Agreement by the Hearing Panel; and
 - ii. \$5,500 on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement by the Hearing Panel, pursuant to s. 24.2 of MFDA By-law No.1;
 - c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - d) the Respondent will attend in person or by teleconference on the date set for the Settlement Hearing.
6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule “A”.

III. AGREED FACTS

Registration History

7. Since 1991, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative). Since 2003, the Respondent has been registered with Investia Financial Services Inc. (the “Member”), a Member of the MFDA.
8. At all material times, the Respondent conducted business in the Mississauga, Ontario area.

Pre-Signed Account Forms

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

10. Between February 2014 and March 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 9 clients.

11. The pre-signed account forms included order forms, Know-Your-Client forms, and transfer authorization forms.

Altered Account Forms

12. Between March 2014 and February 2017, the Respondent altered and used to process transactions, 11 account forms in respect of 6 clients, by altering the following information on the account forms without having the client initial the alterations.

13. The Respondent altered information on the account forms, including order instructions and client information, without having the clients initial the alterations.

The Member's Investigation

14. On February 21 and 26, 2019, during the course of a routine branch review, the Member identified the account forms that are the subject of this Settlement Agreement. As part of this review, the Member reviewed all client files serviced by the Respondent.

15. Between April 25 and August 23, 2019, the Member placed the Respondent under strict supervision.

16. On August 19, 2019, the Member sent audit letters to all clients serviced by the Respondent in order to confirm whether the clients had authorized the transactions in their accounts. No clients raised any concerns in response to this inquiry.

Additional Factors

17. There is no evidence that the Respondent received any financial benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
18. There is no evidence of client loss or lack of authorization for the underlying transactions.
19. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
20. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

21. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.
22. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the “Settlement Hearing”). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.
23. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.
24. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; and
- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

25. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

26. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

27. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

DATED this 8th day of June, 2020.

“Marek Stanislaw Kawka”

Marek Stanislaw Kawka

EP

Witness – Signature

EP

Witness – Print Name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

Schedule “A”

Order

File No. 202033



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: Marek Stanislaw Kawka

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Marek Stanislaw Kawka (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that:

- a) between February 2014 and March 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 9 clients, contrary to MFDA Rule 2.1.1; and
- b) between March 2014 and February 2017, the Respondent altered and used to process transactions, 11 account forms in respect of 6 clients by altering

information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall pay a fine in the amount of \$11,500 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No.1 in installments as follows:

- i. \$6,000 upon acceptance of this Settlement Agreement by the Hearing Panel; and
- ii. \$5,500 on or before [date to be inserted in accordance with the terms of the Settlement Agreement];

2. The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement by the Hearing Panel, pursuant to s. 24.2 of MFDA By-law No. 1.

3. The Respondent shall in the future comply with MFDA Rule 2.1.1; and

4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]