



**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: Robert John Kent**

Heard: September 10, 2019 in St. John’s, Newfoundland  
Decision: September 10, 2019  
Reasons for Decision: February 24, 2020

**REASONS FOR DECISION**

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, QC  
Ann C. Etter  
Joanne Hébert

Chair  
Industry Representative  
Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Alexandra Grishanova	)	Counsel for the Respondent, by teleconference
	)	
	)	
Robert John Kent	)	Respondent, in person
	)	
	)	

## **I. INTRODUCTION**

1. By Notice of Hearing, dated March 4, 2019, the Mutual Fund Dealers Association of Canada (“MFDA”) made the following Allegations against Robert John Kent (“Respondent”):

**Allegation #1:** Between April 2015 and December 2016, the Respondent obtained and possessed 4 pre-signed account forms in respect of two clients, contrary to MFDA Rule 2.1.1.

**Allegation #2:** Between December 2009 and June 2017, the Respondent altered ten account forms in respect of nine clients by altering information on the account form without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

2. The First Appearance took place before a Chair of a hearing panel of the Atlantic Regional Council of the MFDA (“Hearing Panel”) on April 29, 2019, in accordance with section 19.13(b) of MFDA By-law No. 1.

3. At the First Appearance, Counsel for Staff of the MFDA (“Staff”) and Counsel for the Respondent made submissions with respect to scheduling and other procedural matters.

4. After considering the Submissions of both parties, the Hearing Panel ordered, *inter alia*, that the Hearing on the Merits would commence on September 10, 2019 at 10:00 a.m. (Atlantic) in St. John’s, Newfoundland, at a venue to be determined.

5. On August 13, 2019, the Director, Hearings for the MFDA, issued a News Release advising the public of the venue for the Hearing on the Merits.

## **II. SETTLEMENT**

6. On September 6, 2019, Staff and the Respondent entered into a Settlement Agreement.

7. On September 9, 2019, the MFDA issued a News Release advising the public that a Settlement Agreement had been entered into between the parties and confirming that a Settlement Hearing would proceed on September 10, 2019, at 10:00 a.m. at the venue described in the News Release of August 13, 2019.

8. At the commencement of the proceedings on September 10, 2019, the Hearing Panel was presented with an executed Settlement Agreement. We were advised that it had been prepared in accordance with section 24.4 of MFDA By-law No. 1, with the exception that the Notice of Settlement Hearing had not been publicized in accordance with Rule 15.2(1) of the MFDA Rules of Procedure.

9. Rule 15.2(1) provides as follows:

***“15.2 Notice and Public Access***

(1) Except where a settlement is reached after the commencement of the hearing of a proceeding on its merits, a Hearing Panel shall not consider a Settlement Agreement unless at least 10 days notice of the settlement hearing has been given by the Corporation in the same manner as a notice of penalty pursuant to section 24.5 (Publication of Notice and Penalties) of

MFDA By-law No. 1 specifying:

(a) the date, time and place of the settlement hearing; and

(b) the purpose of the settlement hearing with sufficient information to identify the Member or person involved and the general nature of the allegations which are the subject matter of the settlement.”

10. The Hearing Panel then reviewed Rules 1.3(1) and 1.5(1)(b) of the Rules of Procedure. These provide as follows:

***“1.3 General Principles***

(1) These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness.

***1.5 General Powers of a Panel***

(1) A Panel may:

(b) waive or vary any of these Rules at any time, on such terms as it considers appropriate.”

11. After consideration, the Hearing Panel decided to proceed and consider the Settlement Agreement. Our reasoning for so doing is as follows:

12. On March 4, 2019, the MFDA had issued a public Notice of Hearing detailing the Allegations against the Respondent. On April 29, 2019, the Hearing Panel had issued an Order which gave notice of the date, time and general location of the Hearing on the Merits.

13. On August 13, 2019, the MFDA issued a News Release advising the public of the specific venue location for the Hearing on the Merits.

14. Consequently, at least 10 days notice had been provided, identifying the person involved, the general nature of the Allegations which were the subject matter of the Settlement Hearing, as well as the date, time and place where a consideration of these Allegations would occur.

15. In our view, under all the circumstances, it was appropriate to waive certain of the provisions of Rule 15.2 of the Rules of Procedure so that the Settlement Agreement could be considered by the Hearing Panel on the first day set for the Hearing on the Merits.

16. This approach is consistent with that adopted by previous Hearing Panels. See, for example: *Re: Jennifer Lynn Killins* [2012] MFDA File No. 201109.

17. At the commencement of the Settlement Hearing, on September 10, 2019, the Hearing Panel granted the joint request of the parties to move the proceedings “in camera” so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the MFDA Rules of Procedure.

18. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

19. After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on September 10, 2019. At that time, we advised that written Reasons would follow. These are those Reasons.

### **III. THE SETTLEMENT AGREEMENT**

20. The salient portions of the Settlement Agreement are as follows:

#### **“I. INTRODUCTION**

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 should 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 April 2015 and December 2016, the Respondent obtained and possessed 4 pre-signed account forms in respect of two clients, contrary to MFDA Rule 2.1.1;
- b) between December 2009 and June 2017, the Respondent altered ten account forms in respect of nine clients by altering information on the account form 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 be prohibited from engaging in securities related business in any capacity while in the employ of or associated with an MFDA Member for a period of one year, commencing on the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s 24.1(e) of MFDA By-law No 1;
- b) the Respondent shall pay a fine in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- e) the Respondent will attend in person, on the date set for the Settlement Hearing.

### **III. AGREED FACTS**

#### **Registration History**

6. Since May 2007, the Respondent has been registered in Newfoundland and Labrador as a mutual fund salesperson (now known as a dealing representative)<sup>1</sup> with Investia Financial Services Inc. (the “Member”), a Member of the MFDA.

7. At all material times, the Respondent conducted business in the St. John’s, Newfoundland area.

#### **MFDA Disciplinary History**

8. The Respondent was previously the subject of a MFDA Settlement Hearing<sup>2</sup> that occurred on March 4, 2016. At the Settlement Hearing, an MFDA Hearing Panel accepted a settlement agreement dated November 12, 2015 where the Respondent admitted that between April 2013 and July 2014, he obtained and used 11 pre-signed order instruction forms in respect of eight clients. As part of that settlement agreement, the Respondent paid a fine of \$6,000 and costs of \$2,500.

#### **Pre-Signed Account Forms**

9. At all material times, the Member’s policies and procedures stated that under no circumstances should an Approved Person hold pre-signed documents in client files.

10. On April 28, 2016, the Member advised the Respondent through a Compliance Memorandum that the use of pre-signed forms to facilitate a transaction or account update was strictly prohibited.

11. Between April 2015 and December 2016, the Respondent obtained and possessed four pre-signed account forms in respect of two clients where the account forms were only partially complete at the time the Respondent arranged for the clients to sign them.

12. There is no evidence that the above listed pre-signed forms were used to process transactions.

13. The pre-signed forms consisted of one New Account Application Form, two Transfer Authorization Forms and one KYC Update Form.

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<sup>1</sup> In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

<sup>2</sup> MFDA File No. 201554

14. The Respondent obtained and possessed three of the four pre-signed forms described within this Settlement Agreement in the period after the March 4, 2016 Settlement Hearing.

### **Altered Account Forms**

15. At all material times, the Member's policies and procedures stated that all material changes made to KYC Update Forms must be initialed by the client. The Member's April 28, 2016 Compliance Memorandum also prohibited the use of pre-signed forms or other forms of signature falsification to facilitate account updates.

16. Between December 2009 and June 2017, the Respondent altered ten account forms in respect of nine clients by making corrections on the account forms without having the client initial the alterations.

17. The forms consisted of seven KYC Update Forms, one New Account Application Form, one Order Instruction Form and one Trade Ticket.

18. The Respondent altered six of the ten forms described within this Settlement Agreement in the period after the March 4, 2016 Settlement Hearing.

### **The Member's Investigation into the Respondent**

19. On June 14, 2017, the Member began an audit of client files maintained by the Respondent, and identified the pre-signed and altered account forms that are the subject of this Settlement Agreement.

20. During the course of its investigation, the Member issued letters to clients whose accounts the Respondent serviced to determine whether the forms utilized by the Respondent were accurate and authorized. No clients responded to the Member's letters.

21. On October 13, 2017, the Member completed its investigation into the Respondent's activities and placed the Respondent under strict supervision for a period of six months as a result of his conduct. The Respondent was required to pay the costs of the Member's administrative review of his activities over the course of his strict supervision. The Member also required the Respondent to complete an Ethics and Professional Conduct Course before he would cease being subject to the strict supervision.

22. On April 9, 2018, the Respondent completed the Ethics and Professional Conduct Course required by the Member.

23. On May 9, 2018, the Respondent ceased being subject to strict supervision by the Member. At this time, the Member issued the Respondent a Warning Letter in respect of his conduct.

24. As a result of the events described above, the sanction sought by Staff and his personal circumstances, the Respondent retired from the securities industry on August 5, 2019.

#### **Additional Factors**

25. 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.

26. There is no evidence of lack of authorization or client loss resulting from the Respondent's conduct.

27. There is no evidence of any client complaints resulting from the misconduct described above.

28. The Respondent has cooperated with Staff during its investigation.

29. By entering into this Settlement Agreement, the Respondent has recognized the seriousness of his misconduct and has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.”

#### **IV. THE LAW**

21. In the Settlement Agreement, the Respondent admitted that he both obtained and possessed four pre-signed forms in respect of two clients and altered ten account forms in respect of nine clients, contrary to MFDA Rule 2.1.1.

a) Standard of Conduct

22. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires, among other things, that:

“Each Member and Approved Person of a Member shall: deal fairly, honestly and in good faith with its clients; observe high standards of ethics and conduct in the

transaction of business; and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.”

b) Pre-Signed Forms are not Permissible

23. “Pre-Signed Forms” is a generic term that applies to account forms that were incomplete at the time they were signed. Members and Approved Persons are only permitted to obtain, use and rely upon forms that are executed by the client after all information on the form has been properly completed.

24. MFDA Hearing Panels have consistently held that obtaining or using pre-signed forms is a contravention of the standard of conduct prescribed under MFDA Rule 2.1.1.

*Tabalba (Re)*, [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201724, Panel Decision dated July 10, 2017.

*Dhaliwal (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018130 Panel Decision dated June 13, 2019.

25. The MFDA has warned Approved Persons against the use of pre-signed forms. Among other things, 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.

MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017).

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

26. 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.

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

c) Altered Forms are Not Permissible

27. In the Settlement Agreement, the Respondent has also admitted that he altered 10 account forms in respect of nine clients by altering information on the account forms without having the clients initial the alterations. He agreed that these actions violated MFDA Rule 2.1.1.

28. Previous MFDA Hearing Panels have held 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.

*Dhaliwal (Re)*, *supra*.

*Chen (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201910, Panel Decision dated June 10, 2019.

29. As with “pre-signed forms”, the MFDA has also warned Approved Persons against altering forms.

MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017).

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

**V. PRINCIPLES REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS**

30. In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

31. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

- (i) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- (ii) Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- (iii) Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- (iv) Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- (v) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- (vi) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
- (vii) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

*Re: Jacobson (Re), 2007 LNCMFDA 27.*

32. Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. These include:

- a) The seriousness of the allegations proved against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience in the capital markets;
- d) The level of the respondent's activity in the capital markets;
- e) Whether the Respondent recognizes the seriousness of the improper activity;
- f) The harm suffered by investors as a result of the Respondent's activities;
- g) The benefits received by the Respondent as a result of the improper activity;
- h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

- i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- j) 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;
- k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- l) Previous decisions made in similar circumstances.

*Re: Headley (Re)*, 2006 LNCMFDA 3 at para.85.

*Re: In the Matter of Robert Roy Parkinson* (2005), Hearing Panel of the Ontario Regional Council, Decision and Reasons dated April 29, 2005, MFDA File No. 200501, at page 22.

## **VI. CONSIDERATIONS IN THE PRESENT CASE**

### a) Nature of the Misconduct

33. We agree with the submissions of Staff that the use of pre-signed forms and altered forms, in the manner described in the Settlement Agreement, are serious breaches of MFDA Rule 2.1.1.

### b) The Respondent's Past Conduct Including Prior Sanctions

34. As indicated above, the Respondent was previously the subject of an MFDA Settlement Hearing. Within the Settlement Agreement in that case, the Respondent acknowledged that he obtained and used 11 pre-signed forms in respect of 8 clients, contrary to MFDA Rule 2.1.1. For this conduct the Respondent agreed to pay a fine in the amount of \$6,000 and costs in the amount of \$2,500.

35. It is clear that the Respondent's prior MFDA Settlement Hearing pertained to misconduct that includes the same contraventions of MFDA Rules as found in this matter. To the Hearing Panel, this is a significant aggravating factor.

c) The Respondent's Recognition of the Seriousness of the Misconduct

36. The Respondent has acknowledged that his conduct constitutes a serious contravention of MFDA Rules. We agree with the Staff submission that, 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.

d) Harm Suffered by Investors

37. It is the position of Staff that there is no evidence of any lack of authorization, client loss or client complaints resulting from the conduct of the Respondent described in the Settlement Agreement. For purposes of determining the appropriateness of the proposed penalty, the Hearing Panel accepts that statement as being factually correct.

e) Benefits Received by the Respondent

38. There was no evidence before the Hearing Panel that the Respondent received any financial benefit from his misconduct beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

f) Deterrence

39. Deterrence is intended to capture both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets in order to protect investors.

40. We agree with the submission of Staff that the proposed penalties should act as a general deterrent by reinforcing the message that pre-signed and altered forms will not be tolerated.

41. The concern of the Hearing Panel was with respect to the Respondent, who did not appear to have learned from the penalty that was imposed on him in 2016 for similar misconduct. However, as stated in the Settlement Agreement, the Respondent left the mutual fund industry in August of 2019 due, in part, to his misconduct and the proposed penalty in the Settlement Agreement.

42. Staff submitted, both orally and in writing that, in its view, the proposed penalties would specifically deter the Respondent. Staff submitted that the proposed one year prohibition, \$5,000.00 fine and \$2,500.00 in costs, when considered in conjunction with the steps already taken by the Member and the other mitigating factors discussed herein, would act as a specific deterrence. One of the factors was that, as set out in the Settlement Agreement, the Respondent has cooperated with Staff throughout this matter.

g) Steps Taken by the Member

43. In respect of the Respondent's conduct, the Member imposed a minimum six month period of strict supervision upon the Respondent. The Respondent was further required to pay the costs of the administrative review of his files and complete an Ethics and Professional Conduct course. The Respondent did, in fact, complete his Ethics and Professional Conduct course. He ceased being subject to strict supervision by his Member after seven months, upon successful completion of all Member imposed obligations.

h) Sanction Guidelines

44. Staff also referred the Hearing Panel to the Sanction Guidelines, which came into effect on November 15, 2018. These Guidelines are not binding on the Hearing Panel, but provide a useful summary of the key factors upon which we can exercise our discretion.

i) Previous Decisions Made in Similar Cases

45. Staff provided the Hearing Panel with a chart which showed that the proposed penalties are consistent with the penalties which have been imposed by MFDA Hearing Panels in previous cases in similar circumstances. The following examples were provided:

- a) *Chen (Re), supra.*
- b) *Tabalba (Re), supra.*
- c) *Dhaliwal (Re), supra.*
- d) *Techer (Re)*, [2016] Hearing Panel of the Prairie Regional Council, MFDA File No. 201662, Panel Decision dated December 5, 2016.

j) Nature of Settlement Agreement Proceedings

46. We have, finally, considered that this was a Settlement Agreement that was reached after, apparently, significant discussion and negotiation. It represents what the parties, with their knowledge and experience, feel is an appropriate resolution. This factor was especially important with respect to the issue of specific deterrence.

**VII. DECISION**

47. After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

**VIII. ORDER**

48. After accepting the Settlement Agreement, we made the following Order:

- a) The Respondent shall be prohibited from engaging in securities related business in any capacity while in the employ of or associated with an MFDA Member for a period of one year, commencing from the date of this Order, pursuant to s 24.1(e) of MFDA By-law No 1;
- b) The Respondent shall pay a fine in the amount of \$5,000 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) The Respondent shall pay costs in the amount of \$2,500 in certified funds, pursuant to s. 24.2 of MFDA By-law No. 1;
- d) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
- e) 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 24<sup>th</sup> day of February, 2020.

“Thomas J. Lockwood”  
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Thomas J. Lockwood, QC  
Chair

“Ann C. Etter”  
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Ann C. Etter  
Industry Representative

“Joanne Hébert”  
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Joanne Hébert  
Industry Representative

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